Supreme Court, U.S.
FILED

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NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1997

NAOMI TREECE

Petitioner

VS.

LYONS TOWNSHIP HIGH SCHOOL
AND
INSURANCE COMPANY OF NORTH AMERICA

Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO
SUPREME COURT OF ILLINOIS

PETITION FOR WRIT OF CERTIORARI

Naomi Treece
5300 Walnut Avenue, Suite 14B
Downers Grove, ILL 60515
630-852-9942

Pro se of Record

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156 pp

QUESTIONS PRESENTED

Petitioner is 58 years of age and a totally disabled worker, injured November 17, 1980, subsisting on Social Security disability benefits from March 12, 1985 to the present time. Dr. John Mullan, Neurosurgeon, Chairman of the Division of Neurosurgery at the University of Chicago Hospital and Clinics diagnosed permanent organic brain damage.

Arbitrator Gilberto M. Galicia and Insurance Company of North America's Lawyers subjected petitioner to dilatory processes, repeated egregious, heinous frauds on the courts so pervasive as to vitiate all orders up to this point as a total lack of due process of law so that petitioner should be granted relief.

1. Was the due process of law clause of the Fourteenth Amendment to the United States Constitution violated by the numerous (25), egregious, intentional misrepresentations of facts by Insurance Company of North America counsel so as to be so pervasive as to void all court and arbitrator decisions requiring the Illinois Supreme Court to remand to assure justice to petitioner, a totally disabled worker?

2. Was it a denial of due process of law and abuse of discretion for the Supreme Court of Illinois to fail to have issued its supervisory order to correct heinous frauds perpetrated upon the courts by insurer's counsel so pervasive as to violate the 14th Amendment to the U.S. Constitution?

3. Was petitioner denied due process of law when Arbitrator Barbara Sherman, having heard the testimony and observed the demeanor of all witnesses, did not write her decision before she was elevated to a Commissioner?

4. Was petitioner denied due process of law when insurer's lawyers made a ninety-five thousand dollar ($95,000) offer of settlement, had it accepted by petitioner and her counsel, and then rescinded by contract of settlement when the newly assigned arbitrator (to replace Barbara Sherman) turned out to be insurer's

counsel's fellow graduate from De Paul University and, to remove any doubt, he literally jumped up and down with joy at the news and immediately and unilaterally withdrew said contract dishonestly, dishonorably and fraudulently?

5. Was petitioner denied due process of law and is the Industrial Commission of Illinois guilty of obstruction of justice in withholding 146 pages of the record, to the detriment of the petitioner and to justice itself, constituting fundamental error so as to combine with insurer's counsel's frauds on the courts (and arbitrators) so pervasive as to result in denial of constitutionally guaranteed due process of law for petitioner?

6. Was petitioner denied due process of law when arbitrator Gilberto M. Galicia never presided over any of the arbitration proceedings, never observed or heard any of the witnesses testimony, wholly omitted the 146 pages of the record in which he used to arrive at his decision.

7. Was petitioner denied due process of law wherein Commissioner's Richard Gilgis and Douglas Holland affirmed Arbitrator Galicia's faulty decision in their Decision and Opinion on review dated October 20, 1987 which was vacated and remanded by Judge White on April 17, 1989 and on remand decided by the same Commissioner Richard Gilgis, et al, on January 31, 1990 that; (1) petitioner was totally disabled from the work injury for life and awarded all benefits, (2) the insurer was guilty of vexatious delay and imposed penalties and attorney's fees accordingly.

8. Was petitioner denied due process of law wherein based upon the twenty-five (25) frauds on the court made by the insurer's lawyers in their briefs and repeated to the Appellate Court of Illinois, led the court into error and into affirming the much earlier (and wrong) decision of the Commissioner's Decision and Opinion on review dated October 20, 1987 which even the Commissioner's changed as stated above on 1/31/90.

9. The Supreme Court of Illinois let the Appellate Court of Illinois Order 1-91-1365 W.C. stand and in its refusal of a Motion for Supervisory Order and Motion for Reconsideration thereof on September 11, 1997, said frauds being so pervasive as to result in denial of constitutionally guaranteed due process of law for petitioner.

10. Did the eleven (11) incorrect statements in the Appellate Court of Illinois Order 1-91-1365 W.C. skew the judicial process and deny due process of law to the petitioner.

11. Was petitioner denied due process of law when Patrick J. McKenna, Counsel for Insurance Company of North America wrote ten grievous fraudulent statements of misrepresentations in his Motion for Summary Judgment and submitted it to the Circuit Court of Cook County Illinois on March 26, 1997, Case No. 93L 8878.

12. Who, if not you in the Supreme Court of the United States will stand up to Insurance Company of North America's Lawyers, Arbitrator Gilberto M. Galicia, Commissioner's Richard Gilgis, Douglas Holland and say to these officer's of the Court.

> "It's against the law to become a blatant liar in the Decision's Brief's and argument before the Courts and Industrial Commission of Illinois and hold them accountable for professional misconduct." Thus denying petitioner due process of law.

13. Will no one in the Supreme Court of the United States stand up to The Industrial Commission of Illinois and say, "It's against the Laws, and obstruction of Justice" to withhold evidence from Naomi Treece's Worker's Compensation Case 81W.C.595 or any injured worker, and hold The Industrial Commission of Illinois accountable for misconduct. Thus denying Naomi Treece due process of law.

LIST OF PARTIES

Naomi Treece	Petitioner
Lyons Township High School	Respondent
Insurance Company of North America AKA Cigna Companies	Respondent

TABLE OF CONTENTS

	Page
Questions Presented	i - iii
List of the Parties	iv
Table of Contents	v
Appendices	v - vi
Table of Authorities	vii
Statutes	viii
Opinions Below	1 - 3
Jurisdiction	4
Constitutional Provisions Involved	4
Statement of the Case	5 - 12
Incorrect Statement of Order, The Appellate Court of Illinois, No. 1-91-1365WC	13 - 19
Reasons For Granting The Writ	20 - 24
Conclusion	25 - 26

Appendices:

APPENDIX A: Motion For Reconsideration, Supreme Court of Illinois, Springfield, Illinois, September 11, 1997	A
APPENDIX B: Motion for Supervisory Order, Supreme Court of Illinois, Springfield, Illinois, August 11, 1997	B
APPENDIX C: Mandatory Arbitration Award, Circuit Court of Cook County, Illinois, October 22, 199[illegible]	C
APPENDIX D: "Order", The Appellate Court of Illinois, First District, Industrial Commission, May 15, 1992	D
APPENDIX E: Memorandum Decision and Judgement, Circuit Court of Cook County, Illinois March 25, 1991	E

Appendices (con't)

Page

APPENDIX F: Memorandum Decision and Judgement, Circuit Court, Cook County, Illinois February 21, 1991 . . . . . F

APPENDIX G: Decision and Opinion on Remand, Industrial Commission of Illinois January 31, 1990 . . . . . G

APPENDIX H: Decision and Judgement Order, Circuit Court of Cook County, Illinois May 5, 1989 . . . . . H

APPENDIX I: Decision and Judgement Order, Circuit Court of Cook County, Illinois April 17, 1989 I

APPENDIX J: Decision and Judgement Order, Circuit Court of Cook County, Illinois September 9, 1988 . . . . . J

APPENDIX K: Decision and Opinion on Review, Industrial Commission of Illinois October 20, 1987 . . . . . K

APPENDIX L: Decision of The Arbitrator, Industrial Commission of Illinois June 25, 1986 L

APPENDIX M: Notice and Decision of The Arbitrator, Industrial Commission of Illinois December 21, 1981 . . . . . M

APPENDIX N: Decision of The Arbitrator, Industrial Commission of Illinois February 19, 1981 . . . . . N

TABLE OF AUTHORITIES

Cases

Page

Stratton Group, Ltd. v. Sprayregan
466 F. Supp. 1180, 1185, N. 4 (S.D.N.Y. 1997) . . 15

Epstein v. Haas Securities Corp.,
731 F. Supp. 1166, 1187 (S.D.N.Y. 1990) 15

Generally Globus v. Law Research Services, Inc.
418 F. 2d., 1276, 1288 (2d, cir 1969) 15

Kansas City Operating Corp. v. Darwood
278 F. 2d. 345, 357 (8th Cir. 1960) 15

Vaughn v. State, 3, Tenn.
Crim. App. 54, 456, S.W. 2d 879, 883 4

English v. Industrial Commission
(1986) 151, Ill. App. 3d, 682, 5902 N.E. 2d. 1247 . 10

Glover v. Industrial Commission
(3rd District 1985) 140 Ill. App. 3d, 361,
92 Ill. Dec. 794, 485 N.E. 2d. 605 10

Holman v. Johnson; 98 Eng. Rep. 1120, 1121 (1975) . . 15

Brown v. Rauscher Pierce Refines Inc.
994 F 2d, 775, 778 (11th cir. 1993) 12

Cohen v. Wedbush, Noble Cook, Inc.;
841 F. 2d, 282, 285 (9th cir. 1988) 12

George Day Const. Co. v. United Brotherhood of Teamsters
772, F. 2d 1471 (9th cir. 1984) 12

Peisch v. Ware 4 Cranch 347 2L. Ed. 643 18

Kline v. Catara (1844, cc Mass) F. Cas No. 7869 16

Statutes:

9 U.S.C. § § 1-16 4

28 U.S.C. § 1257 3

United States Constitution:

U.S. CONST. Art. IV, §1 4

U.S. CONST. Art IV, §2 4

U.S. CONST., amend. V 4

U.S. CONST., amend XIV 4
8
11
13
17

The United States Arbitration Act of 1947
(9 U.S.C. § 10 (AD) 18

Code of Civ. Proc § 1286.2 Sub. D. © 19

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ON PETITION FOR A WRIT OF CERTIORARI TO
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PETITION FOR WRIT OF CERTIORARI

Petitioner, Naomi Treece, respectfully prays for a writ of certiorari to review the judgments of the Court of Appeal of Illinois.

OPINIONS BELOW

The decision of the Supreme Court of Illinois denying Naomi Treece's motion for Supervisory Order is not reported and is reprinted in Appendix B The Opinion of the Court of Appeal, Appellate Court of Illinois, First District Industrial Commission Division is not Reported and is reprinted as Appendix D.

APPENDIX A: Motion For Reconsideration, Supreme Court of Illinois, Springfield, Illinois, September 11, 1997, is reprinted in Appendix ..... A

APPENDIX B: Motion for Supervisory Order, Supreme Court of Illinois, Springfield, Illinois, August 11, 1997, is reprinted in Appendix ..... B

APPENDIX C: Mandatory Arbitration Award, Circuit Court of Cook County, Illinois, October 22, 1996 is reprinted in Appendix C

APPENDIX D: "Order", The Appellate Court of Illinois, First District, Industrial Commission, May 15, 1992 is reprinted in Appendix ..... D

APPENDIX E: Memorandum Decision and Judgement, Circuit Court of Cook County, Illinois March 25, 1991 is reprinted in Appendix ..... E

APPENDIX F: Memorandum Decision and Judgement, Circuit Court, Cook County, Illinois February 21, 1991 is reprinted in Appendix ..... F

APPENDIX G: Decision and Opinion on Remand, Industrial Commission of Illinois January 31, 1990 is reprinted in Appendix ..... G

APPENDIX H: Decision and Judgement Order, Circuit Court of Cook County, Illinois May 5, 1989 is reprinted in Appendix ..... H

APPENDIX I: Decision and Judgement Order, Circuit Court of Cook County, Illinois April 17, 1989 is reprinted in Appendix I

APPENDIX J: Decision and Judgement Order,
Circuit Court of Cook County, Illinois
September 9, 1988 is reprinted in Appendix . . . . . J

APPENDIX K: Decision and Opinion on Review,
Industrial Commission of Illinois
October 20, 1987 is reprinted in Appendix . . . . . K

APPENDIX L: Decision of The Arbitrator,
Industrial Commission of Illinois
June 25, 1986 is reprinted in Appendix L

APPENDIX M: Notice and Decision of The Arbitrator,
Industrial Commission of Illinois
December 21, 1981 is reprinted in Appendix . . . . . M

APPENDIX N: Decision of The Arbitrator,
Industrial Commission of Illinois
February 19, 1981 is reprinted in Appendix . . . . . N

JURISDICTION

The Court of Appeal, after sixteen years of litigation, Petitioner filed, "Naomi Treece's Motion for Supervisory Order" on July 15, 1997 in the Supreme Court of Illinois, which is the court of last resort and which had discretionary authority to review the case. The court denied the motion for Supervisory Order on August 11, 1997. Petitioner filed a Motion for Reconsideration and the court denied that on September 11, 1997. This petition is timely filed within ninety days of that denial. The jurisdiction of this court is invoked pursuant to 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISIONS INVOLVED

Article IV, Section 1 of the United States Constitution provides in pertinent part:

> *Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state.*

The Fifth Amendment to the United States Constitution provides in pertinent part:

> *No person shall be . . . . . deprived of life, liberty or property without due process of law...*

Section 1 of the Fourteenth Amendment to the United States Constitution provides in pertinent part:

> *No state shall enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law. . .*

STATEMENT OF THE CASE

This case chronicles BROKEN JUSTICE. Due process of law (procedural 14th Amendment to the United States Constitution guarantees everyone "fundamental fairness and substantial justice", according to the established rules and laws of the court.

Vaughn v. State, 3 Tenn. Crim. Appl 54, 456, S.W. 2d 879, 883.

I WAS NOT AFFORDED THAT BASIC RIGHT.

Unless this Honorable Supreme Court of the United States exercises its authority and issues the requested petition for a Writ of Certiorari, an erroneous Appellate Court of Illinois Order No. 1-91-1365 W.C. will continue to stand. Containing 11 incorrect statements.

The Appellate Court of Illinois abuse of discretion and error of a prejudicial nature has caused great harm to me and the Judicial system as a whole.

I have had my rightful benefits, including medical care and credibility taken from me, thus being forced to live like a parasite.

The respondent's lawyers perpetrated a fraud upon the court by not following the Supreme Court of Illinois rules, a subject that was urged to the Appellate Court of Illinois and can be shown to be the major factor for the Appellate Court of Illinois errors and "Dirty Hands".

Because officers of the Court, and the Court itself, either perpetrated a fraud upon the court or knew of the fraud perpetrated upon the court, but did nothing to correct this legal abuse, and did not hold the respondents accountable as is required by the judicial code of conduct, nor did the, 1) Circuit Court of Cook County, Illinois; 2) Industrial Commission of Illinois; or 3) Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois - give any direction to the Appellate Court of Illinois as

to the Respondent's misconduct denying the court the Truth and necessary knowledge needed to make a fair and proper decision, thus denying me due process of law.

Justice can only be accomplished when everyone, including officers of the court and the court itself are held accountable for their own conduct according to the Rules, Laws of Illinois, and the United States constitution.

Learning to live with a severe disability is very difficult. I know, because my disability has changed my life forever.

It is undisputed that I sustained a work related injury on November 17, 1980.

Dr. John Mullan, Neurosurgeon, Chairman of Division of Neurosurgery at the University of Chicago Hospitals diagnosed permanent organic brain damage causally related to the workplace injury.

The respondent's lawyers stipulated into the record:

> *"Respondent's doctor Vincent Sackett opinion, Naomi Treece is suffering from a disability which is causally related to the workplace injury".*

My attorney, Mr. David Wittenberg, told me the Appellate Court of Illinois had ruled against me and that I could not take my case to a higher court, because the Appellate Court of Illinois judges would not give me a certificate of importance.

I asked my attorney, *Am I not important enough to have the certificate of importance. Is my case not important to the judicial courts. Don't I have and deserve all the rights of everyone else?*

Does the Appellate Court of Illinois think I'll just go somewhere to a dark corner, cry for a while, and just accept what they have done by going away.

My attorney told me there is nothing more he could do. I could not do anything except thank him for twelve years hard work. I thought my Worker's Compensation litigation was over - - - How wrong I was!

The Sheriff served me with a summons. One of my doctors filed a lawsuit against me for non-payment of medical bills. The respondent refused to pay for necessary medical treatment and they got away with it.

On July 22, 1993, the Sheriff served me with another summons. Insurance Company of North America filed a lawsuit seeking $43,313.32 for alleged overpayments of temporary total disability compensation payments to me, and attorney fees arising out of my Worker's Compensation claim.

The Respondent did not pay for <u>any medical bills</u>, but they wanted me to pay them! I borrowed some money, retained a new lawyer and was now in the Circuit Court of Cook County, Illinois as a defendant. I went to Court on the Court dates, but my attorney did not show up in Court some of the court dates. Insurance Company of North America's lawyer, <u>Patrick J. McKenna</u> was having his way each time we went before the Judge, and I could see me loosing once again to the powerful Insurance Company of North America.

About three years after Insurance Company of North America filed their lawsuit, we went to mandatory arbitration on October 22, 1996, the arbitrator's ruling stated:

> *"We enter the award in favor" of the defendant, Naomi Treece and against the plaintiff Insurance Company of North America.*

Insurance Company of North America elected to continue the fraudulent litigation.

On March 26, 1997, Counsel Patrick J. McKenna filed his Motion for Summary Judgement in the Circuit Court of Cook County Illinois.

Counsel, Patrick J. McKenna wrote ten clear, heinous, fraudulent, misrepresentations of the facts in my Worker's Compensation case, perpetrating pure criminal deception upon the court. Counsel Patrick J. McKenna states:

> *"Insurance Company of North America" had been voluntarily paying T.T.D. benefits all along in order to avoid any risk of future statutory penalties.*

I requested Insurance Company of North America produce the canceled checks as proof to counsel Patrick J. McKenna's statement in his Motion for Summary Judgment.

Patrick J. McKenna has not produced any canceled checks to this date. The lies in the Respondent's Motion for Summary Judgement continues 16 years later.

My daughter and two grand children visited me and found me trying to figure out what really happened during the twelve years of my Worker's Compensation litigation.

The Appellate Court of Illinois court records cost $450.00 to reproduce.

The Christmas presents the children had given me were returned to raise the money for the court records. That was hard for me to do.

On January 29, 1997, the court records were reproduced for me, my family and I set out to research my Worker's Compensation case.

The magnitude of twelve years litigation was very hard for us all.

The records reveals: *"THE DIRTY HANDS".*

Respondent's lawyer, Joseph A. Garofalo and Arbitrator Gilbert M. Galicia were law school classmates. Both lawyers graduated from DePaul University, Chicago, Illinois with a J.D. degree in 1977.

Respondent's lawyer, Joseph A. Garofalo, rescinded the offer to settle the case the moment arbitrator Gilberto M. Galicia was reassigned to my case No. 81 W.C. 595, (I accepted the settlement offer before it was rescinded).

The Industrial Commission of Illinois withheld 146 (one hundred forty-six) pages of evidence from the record in which Arbitrator Gilberto M. Galicia used to arrive at his decision, Case No. 81 W.C. 595, obstructing justice and depriving me due process of law.

- The treating neurosurgeon Dr. John Mullan's deposition taken April 2, 1985 was not in the record.

- Arbitrator Barbara Sherman's Arbitration hearing, February 25, 1985 in which Dr. David Garron testified was not in the record.

Arbitrator Gilberto M. Galicia never presided over any of the arbitration proceedings and wrote his decision from the faulty record provided to him by the Industrial Commission of Illinois, omitting 146 pages of evidence.

Three Judicial Courts wrote in their Decisions and Order, *"Arbitrator Gilberto M. Galicia was prejudicial to (Naomi Treece), Petitioner.*

Commissioners Douglas Holland and Richard Gilgis, officers of the court wrote the Decision and Opinion on Review dated October 20, 1987. Three of the five paragraphs in that decision contain heinous, fraudulent, misrepresentations of the facts in my Worker's

Compensation case. The Commissioners wrote with criminal deception:

- Dr. Mullan, petitioners treating physician released her to return to work on November 11, 1982. (Respondent used this fraudulent statement in their brief and argument many times).

Respondent's agent, Ruth Owen's report, dated December 2, 1982 states: *"As recommended I attended Mrs. Treece's visit with Dr. Mullan on November 11, 1982. As Dr. Mullan would give me no indication concerning a date of return to work for Mrs. Treece, I feel an independent medical examination is necessary and project a date for release to return to work."*

As we were leaving Dr. Mullan's office, Ruth Owens took the prescriptions from me that Dr. Mullan had prescribed for my treatment. She refused to return them to me.

Dr. Mullan's deposition dated April 2, 1985 stated, I think it's quite important that she take the Delantin because the electrical activity shows a potential for developing epilepsy. The respondent's agent deprived me of medication for pain and treatment prescribed by my own doctor. That was Respondent's rehabilitation efforts.

The rehabilitation efforts were designed to help the respondent, not to help me. There was never any treatment by the respondent's doctors, they offered only their expert opinions of my condition in court as a witness for respondent.

Insurance Company of North America refused to provide or pay for reasonable and necessary medical treatment, and the Respondent's got away with it.

The respondent ceased its payments of temporary total disability as of April 10, 1983 and continued heinous, fraudulent litigation for nine more years. Then filed a lawsuit against me.

The respondent's lawyers have perpetrated frauds with criminal deception and heinous misrepresentations of the facts upon the courts and Industrial Commission of Illinois that have skewed the results of my Worker's Compensation Case No. 81 W.C. 595 and resulted in a denial of due process of law for me.

The bulk of twenty-five (25) fraudulent misrepresentations in respondent's lawyers Brief and Argument submitted to the Appellate Court of Illinois and their audacity in perpetrating them upon the courts led the Appellate Court of Illinois into fundamental error stating eleven incorrect statements in their order, Case No. 1-91-136 W.C. These invidious, egregious repeated frauds upon the court came right out of respondent's Brief and Argument submitted to the Appellate Court of Illinois.

Insurance Company of North America had dumped their responsibilities on the tax payers of America.

I was awarded total disability social security benefits on March 12, 1985 to present time.

The last Decision and Opinion on Remand dated January 31, 1990 from the Industrial Commission of Illinois granted me permanent total disability for life.

The last two decisions from the Circuit Court of Cook County Illinois dated, February 21, 1991 and March 25, 1991 granted me permanent total disability for life.

The Appellate Court of Illinois ignored all three of these decisions.

Because of the Industrial Commission's expertise in the area of Worker's Compensation, its findings on the question of the nature and extent of permanent disability should be given substantial deference, *English v. Industrial Commission* (1986) 151 Ill. App. 3d. 682, 502 N.E 2d 1247. The first statement and the cited case in the same paragraph states: "It is presumed that the Industrial Commission considers competent and proper evidence in reaching

its decision. *Glover v. Industrial Commission (3rd District) (1985) 140 Ill. App. 3d 361, 92 Ill. Dec. 794, 485. N.E. 2d. 605.* The Appellate Court did not get competent and proper evidence from the respondent's lawyers. Arbitrator, Gilberto M. Galicia, or Industrial Commission of Illinois.

Don't the rule of professional conduct and judicial code of conduct stand for anything?

I respectfully state that I never freely gave up my constitutional rights by filing a Worker's Compensation claim, but that is certainly what took place in case No. 81 W.C. 595 before Industrial Commission of Illinois.

Until a person becomes a disabled victim in the cesspool of injustice called the Illinois Worker's Compensation system, no one can imagine the injustices, indignities, cruelties and lack of medical treatment or care a disabled worker must endure, and the damages that occur to the judicial system.

It is very lonely and frightening to have discovered/and uncovered what appears to be "business as usual" - a legally corrupt Worker's Compensation system that functions on deal making and the "Good old Boy's Club" rather than on the Truth.

As a parting shot at me, about November 16, 1983, respondent's agent, Gary Goldetsky, told me to go to public aid for medical help, Insurance Company of North America will not help you in any way and then he laughed.

I pray that the Honorable Supreme Court of the United States does not find anyone's Worker's Compensation case a laughing matter.

I pray the Honorable Supreme Court of the United States will grant my petition for Writ of Certiorari.

No. 1-91-1365WC

IN THE APPELLATE COURT OF ILLINOIS

FIRST DISTRICT,
INDUSTRIAL COMMISSION DIVISION

Lyons Township High School,	)	Appeal from the
	)	Circuit Court of Cook
Respondent-Appellant,	)	County, Illinois
	)	
v.	)	Nos. 87-L-51221 and
	)	90-L-50184
The Industrial Commission,	)	
et al. (Naomi Treece,	)	
Petitioner)	)	Honorable Alexander
	)	Alexander White
Appellees.	)	Judge, Presiding

ORDER

INCORRECT STATEMENT OF THE ORDER

The Respondent presented to the Appellate Court of Illinois, First District, Industrial Commission, Division.

Brief and Argument - Received August 13, 1991 by: Philip G. Brinkerhoff of Counsel.

Respondent's Brief states: (Page 1) - Incorrect Statement

1. Treece had three (3) arbitration hearings before the Illinois Industrial Commission with respect to her right to receive Worker's Compensation benefits from the Respondent.

The Appellate Court of Illinois states in their Order of May 15, 1992:

Treece had three (3) arbitration hearings.
This is a clear fraudulent statement.

Record Reveals:

Naomi Treece had eleven (11) hearings before the Industrial Commission of Illinois. Naomi Treece had five (5) proceedings before the Circuit Court of Cook County, Illinois.
The record reveals:

CASE HISTORY

Industrial Commission of Illinois

Date	Court Record Number	Arbitrators
1. 02/09/81	C000333 thru C000414	Adolphus Green
2. 02/18/81	C000415 thru C000419	Adolphus Green
3. 09/08/81	C000420 thru C000464	Adolphus Green
4. 11/13/81	C000465 thru C000536	Adolphus Green
5. 02/25/85	C000537 thru C000686	Barbara Sherman
6. 02/25/85	C000965 thru C001054	Barbara Sherman
7. 04/09/85	C000687 thru C000796	Barbara Sherman
8. 05/29/85	C000798 thru C000875	Barbara Sherman
9. 6/25/86	C001147 thru C001151	Gilberto M. Galicia
10. 12/11/86	C000876 thru C000964	Alvin R. Cooke
11. 10/20/87	C001213 thru C001214	Richard Gilgis Douglas Holland
12. 01/31/90	C001164 thru C001173	Ted Black Richard Gilgis Berry Ketter

PLEASE NOTE: Arbitrator Gilberto M. Galicia never presided over any of the arbitration hearings, and wrote his decision from the record ONLY with 146 pages of evidence missing!

2. *PAGE ONE (1) - INCORRECT STATEMENT*

The first two arbitration hearings were before Arbitrator Adolphus Green.

The record reveals:
Arbitrator Green presided over four (4) arbitration hearings. Case No. 81 WC 595.

1.	02/09/81	C000333 thru C000414	Adolphus Green
2.	02/18/81	C000415 thru C000419	Adolphus Green
3.	9/08/81	C000420 thru C000464	Adolphus Green
4.	11/13/81	C000465 thru C000536	Adolphus Green

3. *PAGE ONE (1) - INCORRECT STATEMENT*

The third hearing was before Arbitrator Barbara Sherman.

The record reveals: C000420 through C000464

Third hearing date, September 8, 1981 - Arbitrator Adolphus Green presiding.

Four years, four months after the third hearing, Arbitrator Barbara Sherman presided over Case No. 81 WC 595, for the first time on February 25, 1985.

Arbitrator Barbara Sherman did not preside over the third hearing before the Industrial Commission of Illinois. She was not present at all.

4. *PAGE ONE (1) - INCORRECT STATEMENT*

However, the record was transferred to Arbitrator Gilberto M. Galicia for a written decision following Arbitrator Sherman's elevation to Commissioner.

The record reveals: C000906 thru C000962 and C000965 thru C001054

The Industrial Commission of Illinois failed to include the following evidence for Arbitrator Galicia to write his decision:

a. The deposition of the treating physician, Neurosurgeon and Chairman of the Division of Neurosurgery at the University of Chicago Hospitals and Clinics, dated April 2, 1985.

b. The hearing before Arbitrator Sherman dated February 25, 1985 before the Industrial Commission of Illinois in which Dr. David Garron testified.

c. A total of one hundred and forty six (146) pages of evidence was not in the record in which Arbitrator Galicia used to arrive at his decision dated June 25, 1986, Case No. 81 WC 595.
Arbitrator Gilberto M. Galicia wrote only one decision.

5. *PAGE FOUR (4) - INCORRECT STATEMENT*

In Dr. Mullan's opinion, both the post-concussive syndrome and the epileptic manifestations were compatible with a relatively mild head injury.

The record reveals: Cooo506 and C000507
Cross Examination by Respondent's Counsel, Mr. Gifford:

Mr. Gifford	Q:	When you say organic, you mean....what do you mean by that:
Dr. Mullan .	A:	Physical damage to the brain.
Mr. Gifford	Q:	Have you found any evidence of that?
Dr. Mullan .	A:	Yes
Mr. Gifford	Q:	And that's the EEG?
Dr. Mullan .	A:	The history is the evidence.
Mr. Gifford	Q:	Isn't it difficult for you to correlate your medical findings with her complaints?
Dr. Mullan .	A:	No. That's typical with 30 years of experience. It's a straight forward problem, not at all.

6. *PAGE FOUR (4) - INCORRECT STATEMENT*

A second application for adjustment of claim was filed and a hearing on that application was held on November 13, 1981.

The Record Reveals: C000415 thru C000419
The second hearing was February 18, 1981, Arbitrator Adolphus Green presiding.

7. *PAGE FOUR (4) - INCORRECT STATEMENT*

Dr. Mullan referred Treece to psychologist Mary T. Weed. The results of the tests did not indicate organic brain damage (physical damage).
The Record Reveals: C000429

by Mr. Wittenberg:

Mr. Wittenberg . Q: The organic brain damage should be determine by Dr. Mullan.

Mary T. Weed . . A: Except the tests are good at suggesting the presence, only the medical doctor can make the diagnosis. The words physical damage do not appear in the record.

8. *PAGE SIX (6) - INCORRECT STATEMENT*

Dr. Garron did not have an opinion as to whether her condition had an organic component or whether her work-related accident had caused the psychiatric condition. He could not definitely state the cause of her condition.

The Record Reveals: C001034 and C001035

By Mr. Wittenberg:

Mr. Wittenberg: . Q: Do you have an opinion based upon a reasonable degree of psychological certainty,

whether the condition you have seen her for and diagnosed on three occasions might or could have been caused or aggravated by the head injury of November 11, 1980 and/or the treatment that she received subsequent to that injury.

Mr. Garofalo . . . A: Object. That was asked and answered.
The Arbitrator Overruled. He did not complete his answer. Is it complications from the medication.
Dr. Garron . . . . A: Yes.
Mr. Wittenberg . Q: What is your opinion?
Dr. Garron . . . . A: It is at least possible that her condition is a consequence of the blow to the head.

9. *PAGE NINE (9) - INCORRECT STATEMENT*

Although Arbitrator Sherman presided over the presentation of evidence in the third hearing, the record was transferred to Arbitrator M. Galicia for a written decision due to Arbitrator Sherman's elevation to Commissioner.

The Record Reveals: C000537 thru C000686

Date was February 25, 1985. Three years and four months after the third hearing, Arbitrator Barbara Sherman presided over the first Arbitration proceedings of Case No. 81 WC 595.

Arbitrator Sherman did not preside over the presentation of evidence in the third hearing. She was not present at the third arbitration proceedings.

10. *PAGE FOURTEEN (14) - INCORRECT STATEMENT*

We note that at the third hearing, Dr. Glen Glista indicated that Treece's present condition was unrelated to her condition.

The Record Reveals: C000420 thru C000464

The third hearing date was September 8, 1981. Three years after the third arbitration hearing, Dr. Glen Glista examined Naomi Treece on September 13, 1984. He examined her one time.

Dr. Glista did not know Naomi Treece or had ever met her at the time of the third arbitration hearing.

Dr. Glista was not present at the third hearing. He did not indicate anything at the third hearing. He was not there.

11. PAGE NINE (9) - INCORRECT STATEMENT

> *We note that this testimony of Dr. Garron was erroneously not included in the record provided to Arbitrator Galicia.*

The Record Reveals: C000965 thru C001054
C000906 thru C000964

The Court failed to state that:

a. The deposition of the treating physician, Dr. John Mullan, neurosurgeon at the University of Chicago Hospital and Clinics, dated April 2, 1985 as not in the record.

b. The arbitration proceedings dated February 25, 1985 in which Dr. David Garron testified was not in the record.

c. A total of one hundred forty-six (146) pages of evidence was not in the record in which Arbitrator Gilberto M. Galicia used to arrive at his decision dated June 25, 1986.

THIS IS NOT DUE PROCESS OF THE LAW! The cumulative frauds perpetrated by the Respondents upon the Courts is violative of the provisions of the Fourteenth Amendment to the U.S. Constitution and analogues in the Illinois Constitution.

REASON'S FOR GRANTING THE WRIT OF CERTIORARI

A uniform federal standard is necessary to uphold "the full faith and credit" and due process public policies.

Federal substantive law requires that an arbitration award be vacated if its enforcement is contrary to public policy.

Brown v. Rauscher Pierce Refines, Inc., 994, 2d, 775, 778 (11th Cir. 1993)

Cohen v. Wedbush, Noble, Cook, Inc., 841 F. 2d 282, 285 (9th Cir. 1988)

Furthermore, as a matter of federal substantive law, an arbitral award must be set aside when it manifestly disregards the law.

George Day Construction Co. v. United Brotherhood of Teamsters, 722 F. 2d. 1471 (9th Cir. 1984)

An arbitration award will be vacated where the rights of the party were substantially prejudiced by misconduct of a neutral arbitrator. (Code Civ. Proc. § 1286.2 Subd. ©

My rights were substantially prejudiced by misconduct of arbitrator Gilberto M. Galicia, Industrial Commission of Illinois; and Respondent's lawyers.

Arbitrator Gilberto M. Galicia's misconduct:

1. Arbitrator Galicia abused the use of authority and power to uphold what is right or lawful.

2. Arbitrator Galicia never conducted any of the arbitration proceedings, observed any of the witnesses or Naomi Treece.

3. The transcripts actually prepared and submitted to Arbitrator Galicia at the request of the Industrial Commission of Illinois failed to include:

a. The treating neurosurgeon and chairman of Division of Neurosurgery at the University of Chicago Hospitals and Clinics. Dr. John Mullan's deposition taken April 2, 1985 was not in the record.

b. The arbitration proceeding conducted by arbitrator Barbara Sherman on February 25, 1985 in which Dr. David Garron, PhD testified was not in the record.

c. The Industrial Commission of Illinois obstructed justice and denied Naomi Treece due process of law when they withheld evidence from the record in which Arbitrator Galicia used to arrive at his decision - Case No. 81 W.C. 595, dated June 25, 1986.

4. Arbitrator Galicia wrote a decision that ignored Arbitrator Adolphus Green's two prior (19b) decisions that granted me temporary total disability.

5. He went back into the record of the two prior proceedings before Arbitrator Green and used much of the evidence contained therein with which he attempted to retry an already adjudicated decision.

6. The Appellate Court of Illinois Order states: Case No. 1-91-1365 W.C.:

The Court determines that Arbitrator Galicia erred in reviewing the prior record compiled before Arbitrator Green. By so doing the finding of Arbitrator Galicia in respect to causal relation was prejudicial to petitioner.

7. Industrial Commission of Illinois states in their Decision and Opinion on remand dated January 31, 1991 that, *Arbitrator Gilberto M. Galicia was prejudicial to petitioner - Case No. 81 W.C. 595.*

8. Circuit Court of Cook County Illinois Memorandum Decision and Judgment dated March 25, 1991, Case No. 87 L 51221 states: *Arbitrator Gilberto M. Galicia was prejudicial to petitioner (Naomi Treece).*

9. The Appellate Court of Illinois First District, Industrial Commission Division No. 1-91-1365WC states: *Arbitrator Gilberto M. Galicia was prejudicial to petitioner (Naomi Treece.*

10. Arbitrator Gilberto M. Galicia did not award any necessary medical or hospital benefits to me in his decision of June 25, 1986. (None of my medical bills were paid by respondent). And the Respondent got away with it.

11. Arbitrator Gilberto M. Galicia wrote thirteen (13) heinous, fraudulent, misrepresentations of the facts with criminal deception in his decision of June 25, 1986.

12. There's no doubt about it, Arbitrator Gilberto M. Galicia was prejudicial to petitioner (Naomi Treece).

> Indemnifying a tortfeasor for punitive damages or for its intentional misconduct and its fraud clearly contravene the laws and public policies of the state in which the misconduct occurred, as of the time of arbitration, in (Illinois).

13. Commissioners Richard Gilgis and Douglas Holland wrote the Decision and Opinion on Review dated October 20, 1987, Case No. 81 W.C. 595.

> a. Three of the five paragraphs in that decision contained heinous fraudulent misrepresentations of the facts that came right out of Arbitrator Gilberto M. Galicia's decision.
>
> b. Three years later Commissioner Richard Gilgis reversed his own decision and granted me permanent total disability.

14. *a. Arbitrator Gilberto M. Galicia's decision dated June 25, 1986, Case No. 81 W.C. 595.*

b. Commissioners Richard Gilgis and Douglas Holland's Decision and Opinion on review dated October 20, 1987, Case No. 81 W.C. 595.

c. These two decisions contain numerous, fraudulent misrepresentations of the facts with criminal deception.

d. Out of these two faulty decisions arises sixteen (16) years of litigation causing me great harm and hardship.

e. The Decision and Opinion on Review dated October 20, 1987 was vacated for five years until the Appellate Court of Illinois reinstated it. (a faulty decision and opinion)

As a Federal Court reaffirmed in Stratton Group, Ltd. v. Spray Regan, 466 F. Supp. 1180, 1185 N.4 (S.D.N.Y. 1979) in a situation involving "common law fraud . . . for reason of public policy an intentional tortfeasor may not escape liability for his conduct by totally shifting it", even if the shift is to a joint tortfeasor that has always been and remains the law of common law jurisdictions such as New York wrong doing, a necessity in terms of punishment and to effectively deter such conduct.

Epstein v. Haas Securities Corp., 731 F. Supp. 1166, 1187 (S.D.N.Y.(1990). Common law jurisdictions have a long unbroken history which forbids private indemnity for reckless and willful misstatements, see generally, *Globus v. Law Research Service Inc., 418 F. 2d. 1276, 1288 (2d Cir 1969)* Cer. denied, 397 U.S. 913 (1970) invalidating private indemnity agreement.

Generally, anyone who engages in a fraudulent scheme forfeits all right to protection, either at law or in equity. *Kansas City Operating Corp. v. Darwood, 278 F. 2d. 345, 357 (8th Cir. 1960)*. The principal of public policy is this: Ex Dolo Mala Non Oritur Oactio, (out of fraud no action arises.....) It is upon that ground the court goes; not for

sake of the defendant, but because they will not lend their aid to such a plaintiff. *Holman v. Johnson, 98 Eng. Rep. 1120, 1121, (1775).*

Illinois and certainly common law jurisdictions have strong fundamental public policies against indemnity for intentional wrong doings and fraud. Those states consider the obligation that an intentional tortfeasor or perpetrator of fraud bear the prospect of liability for his wrongdoing, a necessity in terms of punishment and to effectively deter such conduct.

Without the law there can be no freedom or due process of law.

The Courts in Arbitration cases recognized the power of the Court to recommit matter to the Arbitrators where the award is incomplete or matters submitted are not passed upon. In *Kline V. Catara (1844, CC Mass) F Cas No. 7869* it was shown that there were matters before the arbitrators on which they did not award although they intended to do so, and the Court said that in such case the award ought not be accepted.

Arbitrator Gilberto M. Galicia, Case No. 81 W.C. 595 states clearly in his arbitration award paragraph six that he intended to rule on necessary first aid, medical, surgical and hospital services but he never addressed the issue of medical services or awarded any medical benefits.

CONCLUSION

1. Arbitrator Barbara Sherman heard the testimony and observed the witnesses in the arbitration proceedings but did not write her decision.

2. Arbitrator Gilberto M. Galicia was prejudicial to petition. *Case 81 W.A. 595*

3. Industrial Commission of Illinois obstructed Justice (withholding evidence). *Case 81 W.C. 595*

4. Commissioner's Richard Gilgis and Douglas Holland, officers of the court wrote false statements in their Decision and Opinion on Review, October 20, 1987.

5. The Circuit Court of Cook County Illinois wrote in their Decisions that Arbitrator Galicia's professional misconduct was improper and prejudicial to petitioner, but the court did nothing to hold him accountable for his improper prejudicial misconduct that caused petitioner great harm, hardship and sixteen year of litigation.

6. The Appellate Court of Illinois wrote eleven incorrect statements of facts in their *order, 1-91-1365 W.C.* That came right out of the respondent's Brief and Argument.

7. With all due respect, Judge Alan L. Stouder who wrote the *Appellate Court of Illinois Order 1-91-1365 W.C.* was blind and could not read or review any part of my Worker's Compensation court records. The records were not transcribed to braille.

8. The Supreme Court of Illinois should have granted Naomi Treece's motion for supervisory order based upon the following.

9. *The cumulative, misrepresentations of the facts, lies and frauds perpetrated upon the judicial system as a whole and petitioner are violative of the provisions of the Fourteenth Amendment to the United States Constitution and analogues in the Illinois Constitution.*

The award of arbitrators appointed under a mutual mistake as to the legal necessity of an arbitration is not binding, *Peisch v. Ware, 4 Cranch 347 2L. Ed. 643.*

The United States Arbitration Act of 1947 (9 USC § 10 (AD) provides grounds for vacating arbitration awards 20 ALR Fed, 295 power of court to resubmit matter to arbitrators for correction or clarification from arbitration award 37 ALR 3d. 200.

An arbitration award will be vacated where the rights of the party were substantially prejudiced by misconduct of a neutral arbitrator, (Code of Civ. Proc. § 1286.2 Sub. d.(C).

Three Judicial Courts wrote very clearly in their Decisions and Order that Arbitrator Gilberto M. Galicia was prejudicial to (Naomi Treece) petitioner.

Eight of the eleven decisions were for Petitioner (Naomi Treece).

Two of the three decisions for Respondent were vacated.

Petitioner respectfully requests this court vacate Arbitrator Gilberto M. Galicia's decision, Case No. 81 W.C. 595, and

Vacate the Appellate Court of Illinois Order 1-91-1365 W.C.

For all the foregoing reasons, Naomi Treece's Petition for a Writ of Certiorari should be granted.

Dated: December 8, 1997.

Respectfully submitted:

Naomi Treece

Naomi Treece
5300 Walnut Avenue, 14B
Downers Grove, IL 60515
Tel: 630-852-9942
Pro Se for Petitioner

Supreme Court of Illinois
Supreme Court Building
Springfield 62701

Juleann Hornyak
Office
Clerk of the Court
(217) 782-2035
Telecommunications Device
For the Deaf
(217) 524-8132

First District

20th Floor
160 N. LaSalle St.
Chicago, IL 60601
(312) 793-1332

September 11, 1997

Ms. Naomi Treece
5300 Walnut Avenue, 14B
Downers Grove, IL 60515

THE COURT HAS TODAY ENTERED THE FOLLOWING ORDER IN THE CASE OF:

No. 83598 - Naomi Treece, movant, v. Illinois Appellate Court, First District, et al., respondents

Motion by movant, pro se, to reconsider this Court's order of August 11, 1997, denying motion for supervisory order. Motion denied.

JH:jmb

Supreme Court of Illinois
Supreme Court Building
Springfield 62701

Juleann Hornyak
Clerk of the Court
(217) 782-2035
Telecommunications Device
For the Deaf
(217) 524-8132

First District Office
20th Floor
160 N. LaSalle St.
Chicago, IL 60601
(312) 793-1332

August 11, 1997

Ms. Naomi Treece
5300 Walnut Avenue, 14B
Downers Grove, IL 60515

In re: Naomi Treece, movant, v. Illinois Appellate Court, First District, et al., respondents. No. 83598

Dear Ms. Treece:

The following order was entered on this date in the above captioned case:

The motion by movant for supervisory order is denied.

Very truly yours,

Juleann Hornyak
Clerk of the Supreme Court

JH:jmb

cc: App. Ct./1st Dist.

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
FIRST MUNICIPAL DISTRICT - MANDATORY ARBITRATION

Insurance Company of North America,	)	
	)	
Plaintiff	)	
v.	)	No. 93 L 8878
	)	
Naomi Treece	)	
Defendant	)	

AWARD OF ARBITRATORS

We, the undersigned arbitrators, having been duly appointed and sworn (or affirmed), make the following award:

> We enter the award in favor of the defendant, Naomi Treece, and against the Plaintiff, Insurance Company of North America.

Date of Award: 10/22/96

Signed: (illegible) and,

Mark B. Manning, Arbitrator

19245 Placed on "Judgment on Award" or "Assignment" call 12/9/96 - 9:00 AM

Industrial Division
Mary 15, 1992

No. 1-91-1365WC

IN THE APPELLATE COURT OF ILLINOIS
FIRST DISTRICT, INDUSTRIAL COMMISSION DIVISION

Lyons Township High School, Respondent-Appellant,	)	Appeal from the Circuit Court of Cook County, Illinois
v.	)	Nos. 87-L-51221 and 90-L-50184
The Industrial Commission, et al. (Naomi Treece, Petitioner)	)	Honorable Alexander Alexander White Judge, Presiding
Appellees.	)	

ORDER

This case arises out of Naomi Treece's claim for benefits under Worker's Compensation Act (the Act) (Ill. Rev. Stat. 1989, ch. 48, par. 138.1 et seq.). Treece had three arbitration hearings.

The first two were before Arbitrator Aldolphus Green, who awarded her a total of 33-3/7ths weeks of temporary total disability (TTD) compensation and medical expenses. The third hearing was before Arbitrator Barbara Sherman. However, the record was transferred to Arbitrator Gilberto Galicia for a written decision following Arbitrator Sherman's elevation to commissioner.

Galicia entered an award in favor of Treece finding that she was entitled to TTD from the date of the accident until November 11, 1982, for a total of 103-3/7ths weeks of TTD. However, Galicia found that Treece was no longer suffering from post-concussion syndrome and was instead suffering from underlying psychological problems. For that reason, Galicia denied Treece's application for permanent benefits. The Industrial Commission affirmed Galicia's decision.

On September 9, 1988, the circuit court issued a decision confirming the Commission's decision. However, the circuit court subsequently vacated that decision and on April 17, 1989, issued a second decision reversing the Commission. After arguments on a motion for rehearing brought by Lyons Township High School (Lyons), the circuit court issued a third decision on May 5, 1989, reversing the Commission and remanding the cause to the Commission for reconsideration.

Upon remand, the Commission awarded Treece 175-1/7th weeks of TTD; $1,511.17 for reasonable and necessary medical expenses; a permanent and total disability award of $198.08 per week for life; $15,492 under section 19(k) of the Act (Ill. Rev. Stat. 1989, ch. 48, par. 138.19 (k)) for unreasonable delay of payment; $2,500 under section 19(l) of the Act (Ill. Rev. Stat. 1989, ch. 48, par. 138.19(k)) for unreasonable delay in payment; and attorney fees in the amount of $3,098.

Following the Commission's decision on remand, Lyons appealed to the circuit court. The circuit court confirmed the Commission's decision in its entirety. Treece then brought a motion to correct clerical error. Pursuant to that motion, the circuit court issued another memorandum decision and judgment order dated March 25, 1991. Lyons now appeals from both the May 5, 1989 and the March 25, 1991, circuit court decisions.

The record reveals that an application for adjustment of claim was filed and a hearing on that application was held February 9, 1981. At that hearing, it was disclosed that Naomi Treece was a 41-year-old female employed by Lyons Township High School as a custodian. On November 17, 1980, she was struck in the head by a speaker that fell from the wall where she was working. She drove herself to the Community Memorial General Hospital emergency room. There, she was examined by the attending physician and released.

Treece returned to the hospital later that day for a follow-up examination and was diagnosed as having a concussion. She was admitted to the hospital for four days, then following disputes as to the quality of the care she was receiving, she transferred herself to the University of Chicago Hospital, where she remained for an

additional four days. While there she came under the care of Dr. John Mullan, a board-certified neurosurgeon. Dr. Mullan also diagnosed her as having a concussion and found that she was unable to return to work.

Treece testified that she had been experiencing headaches, nausea, dizziness, and the loss of much of the use of her right hand. She indicated that Dr. Mullan had not released her to return to work and did not know when she could return.

Based upon the foregoing evidence, Arbitrator Green found that Treece was entitled to TTD benefits for the period of November 17, 1980, to January 22, 1981. Neither party filed for review of this decision.

A second application for adjustment of claim was filed and hearing on that application was held on November 13, 1981. At the hearing it was shown that Dr. Mullan believed that Treece had post-concussion syndrome, which was organic in nature. On April 1, 1981, an EEG was performed on Treece which revealed epileptic manifestations. In Dr. Mullan's opinion, both the post-concussion syndrome and the epileptic manifestations were compatible with a relatively mild head injury. He concluded that Treece was unable to return to work. Additionally, he noted that he had referred Treece to psychologist Mary Weed to determine how much of Treece's problem was organic.

On July 22, 1981, Weed performed a standard battery of psychological tests on Treece. Treece performed extremely poorly on these tests. Weed re-tested Treece in October of 1981, at which time Treece's scores were better. Weed indicated that this was probably due to noncompliance by Treece at the first testing.

Based on the results of the tests, Weed concluded that Treece had psychological problems. These psychological problems manifested themselves in Treece's noncompliance in the first testing. Weed indicated that someone with psychological problems like Treece could be agitated by having a speaker fall on her head. However, the results of the tests did not indicate organic brain damage (physical damage). Weed noted that the tests only helped indicate

the presence of organic damage and only a medical doctor was really qualified to make such a diagnosis.

Weed also indicated that Treece's noncompliance may have been because she wanted to make herself seem sicker. Weed stated that such actions were the result of Treece's psychological problems rather than her desire for economic gain.

Dr. David Shenker indicated that after reviewing the medical records he had received it was his opinion that Treece was able to return to work. After examining Treece, he concluded that she did not suffer from significant organic neurological disease and that her complaints could be explained on a psychological basis. He discounted the EEG abnormality and suggested that it may in fact have existed prior to the accident and just never been discovered because she had never had an EEG prior to the accident. Dr. Shenker referred Treece to Dr. David Garron, a clinical psychologist and professor of psychology.

Dr. Garron testified that on October 24, 1981, he saw Treece on a referral from Dr. Shenker. He suggested that her symptoms could have been a side effect of Inderal, a pain medication she had been taking.

On November 3, 1981, Dr. Shenker wrote a letter stating that based on Dr. Garron's report, it appeared that Treece had significant psychiatric problems, but was basically healthy from a physical standpoint and certainly able to return to work.

Treece testified that she was experiencing constant headaches, numbness in her right arm and shoulder, and weight gain. She was still being treated by Dr. Mullan and had not returned to work.

Based upon this evidence, Arbitrator Green found that Treece was entitled to TTD benefits for the period of January 22, 1981 to July 9, 1981. Green also adopted the findings of Dr. Mullan and found Treece's complaints to be credible and consistent with Dr. Mullan's findings. Green found that the services provided by Weed were reasonable. Lyons filed for review, but subsequently dismissed its request.

A third application for adjustment of claim was filed and a hearing on that application commenced on February 25, 1985. In addition to the issues of TTD and permanent disability, Treece also raised the issue of whether penalties should be awarded under sections 19(k), 19(1), and 16 of the Workers' Compensation Act (Ill. Rev. Stat. 1989, ch. 48, pars. 138.19(k), 138.19(1), 138.16).

Evidence was presented showing that the second time Dr. Garron saw Treece was on December 23, 1983. At that time, he noted that her condition appeared to have worsened. At the time of his examination, he did not have an opinion as to whether her condition had an organic component or whether her work-related accident had caused the psychiatric condition. He further indicated that Treece would need to be weaned from her medications before he could render such opinions.

The third time Dr. Garron saw Treece was on August 4, 1984. At that time, he concluded that she was unable to work and recommended hospitalization to wean her from the drugs she was taking. It was his opinion that the medications given to Treece for her injury may have been the cause of her current condition. However, he could not definitively state the cause of her condition. Additionally, he noted that post-concussion syndrome would usually be expected to go away within 18 months to 3 years from the date of the injury, although it could last a lifetime depending on the severity of the blow to the head.

Dr. Glen Glista, a board-certified neurologist, examined Treece on September 13, 1984. It was his opinion that Treece's present condition was unrelated to her accident. He indicated that the vast majority of people suffering such injuries did not develop her problems. He further opined that while it may have been reasonable for Dr. Mullan to find that the accident aggravated her condition transiently for a year, it was not plausible that it aggravated her depression for four years.

Treece testified that she had worked for Lyons for four and one half years as a custodian. Prior to her accident she had been happy and well-adjusted and had never been treated by a psychiatrist or psychologist. However, after her accident, she experienced a variety of problems, including horrible headaches,

weakness in her right hand, loss of concentration, weight gain, and depression. She indicated that she would like to return to work if Lyons would offer her a job, but did not think she could do it.

Dr. Mullan testified that he saw Treece on November 11, 1982. He encouraged her to go back to work because he felt that trial and error was the only way to see if she would be able to work. In his opinion, she was physically able to do the work, the question was whether working would trigger headache pain that would prevent her from continuing. He did not feel she was a malingerer. He noted that an EEG performed on February 17, 1983, was mildly abnormal and showed that the abnormalities noted on April 1, 1981, were still present. Further, he indicated that other EEGs performed on Treece that appeared normal did not mean that a problem did not exist. He indicated that a person could have a normal EEG then suffer a convulsion 30 minutes later. Serial EEGs were needed for a true evaluation. He also indicated that there was no way to differentiate how much of Treece's complaints were functionally as opposed to organically based. He indicated that a jury or an arbitrator would be as skilled as he was in trying to differentiate the two.

Dr. Marvin Ziporyn, a surgeon who was also board eligible in psychiatry, testified that he had never examined Treece, but that he had reviewed the medical testimony in this case. It was his opinion that Treece was suffering from post-concussion syndrome. He based his opinion on the two abnormal EEGs, the history of Treece's symptoms, and the severe initial damage to the cranial contents. He indicated that post-concussion syndrome usually either resolved in two years or did not resolve at all. He admitted that Treece could have been suffering from an organic brain disturbance before the workplace injury occurred. He also admitted that the abnormal EEG could have been abnormal before the injury occurred.

Gary Goldetsky, a clinical psychological intern, interviewed Treece on October 28, 1982. His opinion was that Treece's symptoms were not typical of organic brain syndrome. He found that her response to his tests evidenced questionable effort and motivation. He suggested that she be re-examined by an independent

neurologist or neurosurgeon to determine whether there were physiological or organic contributions to her symptoms and behavior. He noted that absent neurological findings, the possibility of malingering for secondary gain should be investigated. Goldetsky concluded that her job responsibilities as a custodian were modest and that a return to work might be beneficial because it would provide structured experience to improve her self-concept.

Dr. Vincent Sackett examined Treece on September 18, 1984. In his opinion, she was suffering from organic brain syndrome secondary to post-concussion syndrome. He felt that her disability was causally related to the trauma in question. However, he was unable to provide an opinion as to the permanency of the disability due to the medications she was taking. He noted that such an opinion might be possible if she was hospitalized and taken off all medications.

Although Arbitrator Sherman presided over the presentation of evidence in the third hearing, the record was transferred to Arbitrator Gilberto Galicia for a written decision due to Arbitrator Sherman's elevation to commissioner. We note that the testimony of Dr. Garron was erroneously not included in the record provided to Arbitrator Galicia. The treating neurosurgeon Dr. John Mullan's deposition was not in the record.

Galicia entered an award in favor of Treece, finding that she was entitled to TTD from the date of the accident until November 11, 1982, for a total of 103-3/7ths weeks of TTD. However, Galicia found that Treece was no longer suffering from post-concussion syndrome and was instead suffering from underlying psychological problems. For that reasons, Galicia denied Treece's application for permanent benefits.

Subsequent to Galicia's decision, but before review by the Industrial Commission, the record was corrected to include the testimony of Dr. Garron. On October 20, 1987, the Industrial Commission affirmed Galicia's decision. Treece then sought circuit court review of the Industrial Commission's decision.

On September 9, 1988, the circuit court issued a decision confirming the Commission's decision. However, the circuit court later vacated that decision and on April 17, 1989, issued a second decision reversing the Commission. After arguments on a motion for rehearing brought by Lyons, the circuit court issued a third decision on May 5, 1989, reversing the Commission and remanding the cause to the Commission for reconsideration.

Upon remand, the Commission awarded Treece 175-1/7th weeks of TTD; $1,511.17 for reasonable and necessary medical expenses; a permanent and total disability award of $198.08 per week for life; $15,492 under section 19(k); $2,500 under section 19(1); and attorney fees in the amount of $3,098.

Following the Commission's decision on remand, Lyons appealed to the circuit court. The circuit court confirmed the Commission's decision in its entirety. Treece then brought a motion to correct clerical error. Pursuant to that motion, the circuit court issued another memorandum decision and judgment order dated March 25, 1991. Lyons now appeals from both the May 5, 1989, and the March 25, 1991, circuit court decisions.

Lyons first argues that the circuit court erred in setting aside the Industrial Commission's October 20, 1987 decision. Lyons contends that the circuit court did not find that the decision of the Commission was against the manifest weight of the evidence nor did it find that the circuit court improperly substituted its own judgment by weighing the evidence and making a determination of what the Commission's findings should have been.

In contrast, Treece suggests that while the circuit court would have been justified in finding that the Commission's decision was contrary to the manifest weight of the evidence, it did not so hold. Rather, the court exercised restraint and merely remanded the matter to the Commission with directions to re-evaluate the record in light of the court's holding that as a matter of law, the credibility of Treece had already been determined by Arbitrator Green.

The relevant part of the circuit court decision is as follows:

"The Court determines that Arbitrator Galicia erred in reviewing the prior record compiled before Arbitrator Green and then expressly finding that there was a lack of credibility on the part of Petitioner. It was improper for him to again determine the issue of Petitioner's credibility that was previously heard and determined by Arbitrator Green. The Court determines that by not accepting the prior determination of credibility, the finding of the Arbitrator, which was affirmed by the Commission, in respect to causal relation, was prejudicial. Furthermore, it was also improper for Arbitrator Glaicia [sic] to misstate the reason for Dr. Mullen's [sic] referral of Petitioner to Mary T. Weed and Ms. Weed's findings and conclusions concerning Petitioner and her behavior. By so doing the finding of Arbitrator Galicia, which was affirmed by the Commission, in respect to causal relation was prejudicial to Petitioner. The Court determines the matter should be remanded to the Commission for 1) a re-evaluation of the record in respect to the issue of causal relation, accepting the prior determination of credibility by Arbitrator Green, and 2) appropriate findings compatible with the aforesaid re-evaluation."

Section 19(f)(2) of the Workers' Compensation Act (Ill. Rev. Stat. 1989, ch. 48, par. 138.19(f)(2)) provides that the circuit court may "set aside the decision of the Commission * * *, remand the cause to the Commission for further proceedings * * *, and give such other instructions as may be proper." (See Technical Tape Corp. v. The Industrial Comm'n (1974), 58 Ill. 2d 226, 317 N.E.2d 515.) However, the circuit court may not weight conflicting evidence and substitute its judgment for that of the Commission, unless the decision is clearly against the manifest weight of the evidence. Beck v. The Industrial Comm'n (1965), 32 Ill. 2d 148, 204 N.E. 2d 7.

In the instant case, the circuit court specifically held that the Industrial Commission should accept the credibility of Treece. Additionally, the circuit court found that Arbitrator Galicia misstated the reason for Dr. Mullan's referral to Weed and

misstated Weed's conclusions concerning the petitioner and her behavior.

Initially, we note that the circuit court's decision was founded upon questionable grounds since there was no apparent reason why Treece's credibility would remain constant at all the arbitration hearings. At the hearing in question, Treece was testifying about the condition of her injury since the last hearing. In particular, the arbitrator was concerned with the permanency of her condition and how well she was recovering. At the previous hearings, the issues had been limited to the extent of her injury and recovery up to those points for purposes of awarding TTD. Further, medical evidence was offered indicating that Treece's psychological condition might make her want to seem sicker than she really was. As such, her credibility was not a constant which only had to be determined once. Consequently, the circuit court's holding improperly invaded the function of the Commission in that the circuit court ruled that the Commission had to find Treece's testimony credible.

Likewise, the circuit court improperly invaded the province of the Industrial Commission by disputing the Commission's findings with respect to Weed's testimony. Arbitrator Galicia concluded only that Weed's testimony buttressed Lyons's witnesses' testimony that Treece was intentionally doing poorly on the tests and that there was a strong possibility of malingering for secondary gain. Galicia did not conclude that Weed's testimony by itself was sufficient to support such findings. Accordingly, we find that the circuit court erred.

We also find that the original Industrial Commission decision was not against the manifest weight of the evidence. In support of this conclusion, we note that at the third hearing, Dr. Glen Glista indicated that Treece's present condition was unrelated to her accident. Gary Goldetsky's findings supported Dr. Glista's conclusion. We recognize that other evidence was presented which tended to contradict Dr. Glista's conclusion. However, it is properly the function of the Commission to judge the credibility of witnesses, draw reasonable inferences from testimony, and determine the weight to be given to testimony. (Smith v. The Industrial Comm'n (1983), 98 Ill. 2d 20, 455 N.E. 2d 86.)

Additionally, Commission decisions are given great deference as to their findings of fact, including the findings of fact pertaining to the medical evidence presented. Sears Roebuck & Co. v. The Industrial Comm'n (1980), 79 Ill. 2d 59, 402 N.E. 2d 231.

Finally, we note that Arbitrator Galicia's decision did not contradict the earlier finding of Arbitrator Green. Arbitrator Galicia did not say that no accident occurred. In fact, he awarded additional TTD that extended up until November 11, 1982, the date on which Dr. Mullan encouraged Treece to return to work.

Based on these findings, we reverse the circuit court's May 5, 1989, judgment and reinstate the Commission's October 20, 1987 decision. We need not determine whether on remand the Industrial Commission erred in awarding penalties under sections 19(1) and 19(k) and attorney fees under section 16. Because the Commission's original decision is reinstated, the Industrial Commission's decision on remand is rendered moot. We likewise find moot Lyon's contention that on remand the Industrial Commission exceeded the scope of the circuit court's order.

The circuit court's May 5, 1989, judgment is reversed, and the Commission's October 20, 1987, decision is reinstated.

Reversed.

STOUDER, J., with MCCULLOUGH, P.J., WOODWARD, JR., LEWIS, J., RAKOWSKI, J., concurring.

Dated: May 15, 1992

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - LAW DIVISION
TAX AND MISCELLANEOUS REMEDIES SECTION

Naomi Treece,	)	
	)	
Petitioner/Appellant,	)	
v.	)	No. 87 L 51221
	)	
Industrial Commission of Illinois and Lyons Township High School	)	
	)	
Respondent/Appellees.	)	
	)	
Lyons Township High School,	)	
	)	
Plaintiff	)	
v.	)	No. 90 L 50184
	)	Consolidated
Naomi Treece and The Illinois Industrial Commission	)	
	)	
Defendants.	)	

MEMORANDUM DECISION AND JUDGMENT

This matter is before the Court for judicial review of a Decision and Opinion on Remand of the Illinois Industrial Commission (the Commission) awarding Petitioner/Appellant-Defendant, Naomi Treece (Petitioner), temporary total disability (TTD) benefits for a period of _____ weeks total and permanent disability (TPD) benefits commencing November 19, 1984, necessary medical expenses of $1,511.17 and additional compensation of $15,492.00 and $2,500.00 and attorneys fees of $3,098.00, pursuant to Sections 8(b), 8(f), 19(k), 19(l) and 16 of the Worker's Compensation Act (the Act).

FINDINGS, CONCLUSIONS AND DECISION OF THE ARBITRATOR See Attachment A.

FINDINGS, CONCLUSIONS AND DECISION OF THE ARBITRATOR See Attachment B.

FINDINGS, CONCLUSIONS AND DECISION OF THE ARBITRATOR See Attachment C

FINDINGS, CONCLUSIONS AND DECISION OF THE COMMISSION See Attachment D

MEMORANDUM DECISION AND JUDGMENT ORDER
See Attachment E

FINDINGS, CONCLUSIONS AND DECISION ON REMAND OF THE COMMISSION See Attachment F

STATEMENT OF FACTS

This case arises out of Petitioner's claim for workers' compensation benefits. Petitioner has had three arbitration hearings before the Commission with respect to her right to receive workers' compensation benefits from Respondent/Appellee-Plaintiff, Lyons Township High School (Respondent). The first arbitration proceeding was a result of her attorneys filing a petition pursuant to Section 19(b) of the Act, for TTD benefits. On February 19, 1981, Arbitrator Green awarded Petitioner 9-3/7 weeks of TTD payments and certain medical expenses. Arbitrator Green based his award on the testimony of her treating physician, Dr. John Mullan. It was Dr. Mullan's opinion that at that time Petitioner suffered from a post-concussion syndrome.

On December 21, 1981, Arbitrator Green, again pursuant to a Petition under Section 19(b) of the Act, awarded Petitioner 24 weeks of TTD benefits. He also awarded her reasonable medical expenses incurred to that date. The Arbitrator found Petitioner's complaints to be credible and consistent with the findings of her treating physician, Dr. Mullan.

The final arbitration hearing concerned Petitioner's petition for additional TTD and permanency benefits under the Act. Evidence was received, and the entire record was transferred to Arbitrator

Galicia for decision. On June 25, 1986, Arbitrator Galicia awarded Petitioner an additional 103 weeks of TTD benefits. He found that Petitioner had suffered a post-concussion syndrome, as described by Dr. Mullan, for a period of time up to and including November 11, 1982. The Arbitrator found that the claim for benefits and medical expenses, after November 11, 1982, was not reasonably related to the work accident in question. Arbitrator Galicia's opinion was based in part on testimony that on November 11, 1982, Dr. Mullan encouraged Petitioner to return to work on that date. Arbitrator Galicia denied permanency benefits based in part upon Dr. Glista's opinions and testimony. The testimony of Dr. Glista, at the last arbitration hearing, was that Petitioner did not suffer from a post-concussion syndrome, but was suffering from a major depressive disorder, suicidal ideations, over eating, persomviolence, narcolepsy, and loss of interest in sex. It was Dr. Glista's opinion that this psychological condition was not causally related to the accident at issue.

Petitioner sought review of Arbitrator Galicia's award and decision with the Commission. Additional evidence was received by the Commission, which adopted Arbitrator Galicia's decision, and found Petitioner suffered from a psychological disorder which was not causally related to the injury. The Commission adopted the Arbitrator's finding with regard to Dr. Mullan's releasing Petitioner to return to work on November 11, 1982. The Commission noted Petitioner was not cooperative with Respondent's rehabilitation specialist who attempted to find Petitioner work. The Commission adopted the opinion of Dr. Glista, that Petitioner's condition of ill-being, at the time of the third arbitration, a major depressive disorder, suicidal ideations, over eating, hypersomviolence, narcolepsy, and loss of interest in sex (all psychological disorders), was not causally related to the accident in question.

Petitioner sought Circuit Court review, in Case No. 87 L 51221, to set aside the Commission's decision. On April 17, 1989, this Court issued its Memorandum Decision and Judgment Order. The Court determined that Arbitrator Galicia had erred in reviewing the prior record compiled by Arbitrator Green, regarding the credibility of Petitioner, as it was improper for Arbitrator Galicia to again determine the issue of Petitioner's credibility that was

previously heard and determined by Arbitrator Green. The Court determined the error was prejudicial and remanded the cause to the Commission to reconsider its opinion in light of its instruction. The Court also made a determination that Arbitrator Galicia erred in reviewing the prior record compiled by Arbitrator Green, finding a lack of credibility on the part of the psychologist, Mary Weed.

Subsequent to this decision, Respondent brought a motion, pursuant to Section 2-1203 of the Code of Civil Procedure, asking for a re-hearing on the issues which the Court felt dispositive of the case at this point.

On May 5, 1989 the Court modified the April 17, 1989 remand order by making an additional determination that the Commission had erred in misstating the reason for Dr. Mullan's referral of Petitioner to Mary Weed and Mrs. Weed's findings and conclusions. On the issue of Petitioner's condition of ill-being, the Court determined that the Commission was to determine, that at each Section 19(b) hearing, Petitioner established a condition of ill-being, and established that such condition is causally related to the work-related accident. The Court, in its remand order, determined that the Commission's decision, finding that at the first two Section 19(b) hearings, Petitioner suffered from a post-concussion syndrome with some depression, moderately severe decompensation and a mixed bipolar affective disorder, and the Commission's further finding that at the time this matter was heard at the third arbitration hearings on February 25, 1985 and May 29, 1985, Petitioner's condition of ill-being was that of a major depressive disorder, was not against the manifest weight of the evidence.

Following the remand order, Respondent filed a post-trail motion to the Court, requesting the Court to make the decision final and appealable under Supreme Court Rule 301. The Court denied Respondent's motion.

Subsequent to that decision, Respondent moved the Court to certify its May 5, 1989 remand order as appealable under Supreme Court Rule 308 concerning interlocutory appeals. On June 5, 1989, the Court denied Respondent's motion.

Respondent filed a Motion for Leave to File a Complaint for a Writ of Prohibition, pursuant to Illinois Supreme Court Rule 381, with the Illinois Supreme Court. The motion was denied by the Supreme Court. The case was remanded to the Commission for implementation o the instructions contained in this Court's remand order.

On remand the matter was briefed by both parties and both parties submitted proposed decisions to the Commission. At the request of Petitioner, oral argument was heard before the Commission. After oral argument, the Commission reissued its decision, adopting Petitioner's proposed decision verbatim. Respondent filed this judicial review in Case No. 90 L 50184 which was consolidated with Case No. 87 L 51221.

ISSUES PRESENTED FOR REVIEW

1. Whether it was error for the Court to remand the Commission decision on review for further consideration.

2. Whether the Commission, abused the Court's remand order in its Decision on Remand.

3. Whether the finding of the Commission, that Petitioner proved a causal relationship between her accidental injuries of November 17, 1980 and her condition of ill-being, subsequent to November 12, 1982, is against the manifest weight of the evidence.

4. Whether the finding of the Commission, that Petitioner is entitled to additional compensation and attorneys fees, is against the manifest weight of the evidence.

ARGUMENTS OF THE PARTIES AND COMMENTS AND DECISION OF THE COURT

In respect to Issue Number One, Respondent contends that it was error for this Court to remand the Commission decision on review for further consideration; that Section 19(f) of the Act is part of the Illinois legislature's specific statutory system for adjudication of workers' compensation cases; that implicit in this system is that the Commission is the finder of fact and makes conclusions as to a

claimant's eligibility for workers' compensation benefits (United Airlines v. Industrial Commission (1980), 81 Ill.2d 85); that the Circuit Court's and ultimately the Appellate Court's review of Commission decisions is limited to a review provided by the Act (Gunnels v. Industrial Commission (1964), 30 Ill.2d 181); that the Commission decisions are given great deference as to the findings of fact, and in particular, the findings of fact as to the medical evidence; that the Commission is considered the expert in dealing with a claimant's right to receive workers' compensation benefits (Sears Roebuck & Company v. Industrial Commission (1980), 79 Ill.2d 59 and A.O. Smith v. Industrial Commission (1972), 51 Ill.2d 533); that the Commission is given the role of adjudicating questions of credibility and in particular the credibility of medical testimony (Gladstone v. Industrial Commission (1980), 79 Ill.2d 236 and Makris v. Industrial Commission (1980), 82 Ill.2d 502); that under the Act, a Circuit Court is granted a limited role in reviewing these proceedings; that once a Circuit Court has obtained subject matter jurisdiction, under Section 19(f) of the Act, it is to determine whether the Commission's decision is against the manifest weight of the evidence (Guardian Electric Manufacturing Company v. Industrial Commission (1973), 53 Ill.2d 530); that while Respondent acknowledges that the Circuit Court, has the right to remand a case to the Commission under its reviewing power, this right to remand has only been recognized in two types of instances; that the first instance is where the Circuit Court feels there has been error in an evidentiary ruling of the Commission and remands the case to the Commission for further proceedings to correct such error (Technical Tape Corp. v. Industrial Commission (1974), 58 Ill.2d 226); that the second is where the Commission has violated a statutory mandate and not made the requisite "findings of fact and conclusions of law" (National Biscuit, Inc. v. Industrial Commission (1984), 129 Ill.App.118; that in this latter instance, by remand, the Circuit Court instructs the Commission to do what is required by law; that there is no recognized authority for a Circuit Court to do what the Court did in this instance; that in remanding this cause to the Commission, the Court has instructed the Commission to reconsider or "rethink" its decision in light of this Court's instructions; that by so doing, this Court is going behind the Commission's decision and determining item-by-item whether the decision is against the manifest weight of the evidence; that "going behind" the

Commission's decision invades the province of the Commission's expertise; that the Commission has the expertise in determining all disputed issues of fact; that a reviewing court is limited to determining whether the Commission's decisions are against the manifest weight of the evidence; that the Circuit Court is simply to state whether the decision, "as a whole", is against the manifest weight of the evidence; that there is no provision for the Court to consider parts of the decision being against the manifest weight of the evidence or not; that the decision must be taken as a whole and not in "piece meal" fashion; that the result of "piece meal" reconsideration of the decision by the Commission is manifest in this instance; that as set forth above, the Commission disregarded this Court's earlier findings that Petitioner's condition of ill-being was different at the time of the first two Section 19(b) arbitration proceedings than it was at the time of the last arbitration proceeding; that rather than following the Court's limited remand order, the Commission abused the remand order and entered a finding which completely overturned its earlier findings on the issue of Petitioner's condition of ill-being; that such abuse and confusion on the part of the Commission was a result of this Court's attempt to review the Commission's first decision on a "piece meal" basis; that not only did this Court's remand order interject abuse and confusion into the statutory scheme for review, but also deprived Respondent of an opportunity to have a Circuit Court decision on the issue of whether the first Commission decision of October 20, 1987, was against the manifest weight of the evidence; that it is true that Arbitrator Green found that Petitioner was credible with respect to her condition of ill-being at the time of those Section 19(b) hearings, however, as this Court has correctly pointed out, Petitioner's condition of ill-being was different by the time of the third arbitration hearings; that it was within the province of the Commission, at that time, to consider whether Petitioner's complaints were credible with respect to her new condition of ill-being; that the Court found that her new condition of ill-being was a major depressive disorder and thus, while it is possible Petitioner may have been credible in her complaints with respect to a post-concussion syndrome which existed at the earlier two arbitrations hearings, it is still possible that those complaints would not be credible with respect to her new alleged condition of ill-being a major depressive disorder, at the third arbitration hearing, and thus, even if the credibility issue is

resolved in Petitioner's favor, there is still sufficient evidence in the record to support the October 20, 1987 decision of the Commission; that first, there are the opinions of Dr. Glista, Gary Goldetsky, the rehabilitation specialist, Dr. Garron and in addition to Petitioner's testimony; that secondly, even if the Court is concerned with the Commission's characterizations of Mary Weed's testimony or the reasons why Dr. Mullan referred Petitioner to Mary Weed, at best, this testimony would only relate to Mrs. Weed's findings and conclusions as it related to the condition of a post-concussion syndrome, and that these findings and conclusions would not have any bearing on the other condition of ill-being, that a major depressive disorder.

Petitioner responds that this Court's remand order was proper and called for in this cause; that Respondent argues that this Court committed error in remanding this cause to the Commission for consideration pursuant to its remand directions; that this Court's remand order was not only proper, but necessary because of the many prejudicial errors which this Court noted in the Commission's original Decision and Opinion on Review; that in Technical Tape Corp. v. Industrial Commission (1974), 58 Ill.2d 226, the Illinois Supreme Court, with reference to Section 19(f)(2) of the Act, stated at page 232:

> ....provides in part that the circuit court on review "may confirm or set aside the decision of the Commission. If the decision is set aside and the facts found in the proceedings before the Commission are sufficient, the court may enter such decision as is justified by law, or may remand the cause to the Commission for further proceedings and may state the questions requiring further hearing, and give such other instructions as may be proper". See Thompson v. Industrial Com., 377 Ill. 587; National Zinc Co. v. Industrial Com., 292 Ill. 598, 604;

that in Stockton v. Industrial Commission (1977), 69 Ill.2d 120, the Court stated at page 125;

> ...When the circuit court remanded the cause, the Commission had jurisdiction to the same extent as before its first award; however, it was bound by the rules of law

announced and the directions given by the circuit court, and it was bound to follow those directions (Raffaelle v. Industrial Com. (1927), 326 Ill. 166);

that this Court found that the facts which the Commission previously found in its decision of October 20, 1987, were not sufficient and in many ways prejudicial to Petitioner; that based on that such a determination, the Court set aside the Commission's decision and properly remanded this cause to the Commission for re-evaluation of the record in respect to the issue of causal relation and directed that the Commission enter appropriate findings compatible with this re-evaluation and that this is precisely what the Commission did in its Decision and Opinion on Remand.

The Court agrees with Petitioner. Respondent argues that a Circuit Court's right to remand a cause to the Commission is limited to two narrow situations: first, when the Commission errs in respect to evidentiary rulings; and second, when the Commission fails, to make the required findings of fact and conclusions of law. Respondent incorrectly states the law pertaining to the Circuit Court's scope f authority in remanding a matter to the Commission. A Circuit Court may remand for further proceedings, and may also remand with instructions to make additional conclusions findings, to clarify findings, correct errors in evidentiary rulings, or abuses of discretion, and also to correct conclusions of law which are contrary to the law.

Furthermore, a Circuit Court can remand for the purpose of holding an additional hearing to receive additional evidence. In the instant case, the Court first determined that certain findings of the Arbitrator were both contrary to the law and prejudicial. In light of this, the Court remanded the matter to the Commission for it to reconsider its findings based on the Court's determination. The Court's remand order instructed the Commission to 1) re-evaluate the record pertaining to the issue of causal relation, accepting the prior determination of credibility by Arbitrator Green, and 2) make appropriate findings compatible with the aforesaid re-evaluation. It was not error for the Court to remand the Commission decision on review for further consideration.

With respect to Issue Number Two, Respondent contends that the Commission, in its Decision and Opinion on Remand, abused the Court's remand order. Respondent argues that on remand, the Court instructed the Commission to accept that Petitioner was suffering from a psychological condition of ill-being at the time of the third arbitration, which differed from her condition at the time of the earlier two Section 19(b) proceedings; that the Commission on remand failed to follow this Court's instruction concerning the condition of ill-being and completely reversed its decision on the issue of Petitioner's condition of ill-being; that in the remand order, the Commission did not follow this Court's finding that the Commission's first decision, finding that the conditions of ill-being were different, was not against the manifest weight of the evidence; that the Commission abused or violated the Court's remand order by the following;

a) by adopting Dr. Mullan's opinions against Dr. Glista's;
b) by considering the condition of ill-being with respect to Dr. Garron's opinions;
c) by accepting Dr. Marvin Ziporyn's opinion as to the Petitioner's condition of ill-being;
d) by failing to make any finding that Petitioner suffered no organic brain damage at the time of her third and final arbitration based upon Gary Goldetsky's opinion as set forth in the psychological consultation report of November 4, 1982;
e) by failing to follow the Court's order on remand, which stated it was improper for Arbitrator Galicia to misstate the reasons for Dr. Mullan's referral of Petitioner to Mary Weed, in that the Commission on remand completely changed its findings and conclusions with respect to Mary Weed's testimony;
f) by failing to follow the Court's remand order with respect to rehabilitation efforts, which made no reference to any error committed by the Commission in considering its findings and conclusions relating to the testimony of the rehabilitation specialists;
g) by failing to consider the remand order which made no mention of wrong doing on the part of the Commission in considering Dr. Sackett's opinions and conclusions;

that it would not be proper for this Court to enter another remand order to correct the abuse of the Commission decision on remand

but rather, it would be more proper for this Court to vacate the Commission's decision on remand and make a decision as to whether the October 20, 1987 decision, of the Commission, was against the manifest weight of the evidence; that this Court should enter a finding that the first Commission decision was not against the manifest weight of the evidence; that the Court gave two very limited instructions to the Commission to follow on remand; that the Commission failed to follow those limited instructions; that this Court, in re-evaluating the record, should enter an appropriate finding, that, as to the first Commission decision, even assuming that the Court resolves the previously discussed issues of Petitioner's credibility and Mary Weed's testimony in Petitioner's favor, the first commission decision was not against the manifest weight of the evidence; that this Court instructed the Commission to consider the credibility of Petitioner in the earlier Section 19(b) hearings.

Petitioner responds that the Commission's decision and opinion on remand complied with this Court's remand order; that the crux of Respondent's argument is that the Court, on remand, instructed the Commission to accept that Petitioner was suffering from a psychological condition of ill-being at the time of the third proceeding on Arbitration, that was different than her condition at the time of the two prior final Section 19(b) decisions; that this Court merely held that Petitioner's emotional condition was not "the same" at the third proceeding on arbitration as it was at the time of the two prior decisions, and that the Commission's decision was not contrary to law because the Doctrine of Res Judicata was inapplicable; that no decision was made by the Court as to whether the Commission's decision of October 20, 1987, was against the manifest weight of the evidence, since it determined the cause should be remanded to the Commission, because of the numerous prejudicial errors contained therein, and the record pertaining to causal relation should be re-evaluated; that the Court's order was clear, and the Commission properly re-evaluated the record as directed, to determine the ultimate issue of whether Petitioner proved a causal relation between her accidental injuries of November 17, 1980 and her condition of ill-being subsequent to November 12, 1982; that furthermore, the Commission, in its Decision and Opinion on Remand, specifically found that Petitioner's condition of ill-being, subsequent to November 12,

1982, had a significant psychological/psychiatric component, according to Doctors Mullan, Ziporyn, Sackett and Garron; that to this extent all of the doctors agreed with Dr. Glista's opinion that Petitioner had these problems; that the disagreement concerned the cause of the injuries, which was the basis for this Court's remand order; that Respondent argues that virtually every finding which the Commission made in its Decision and Opinion on Remand abused this Court's remand order; that in so doing, it ignores that the purpose the remand order was issued was to evaluate the findings the Court deemed prejudicial to Petitioner, relating to the causal relation; that only by a careful and complete re-examination of the entire record, as directed by this Court, was it possible for the Commission to make the appropriate findings; that Respondent argues that the Commission abused and violated the remand order by: 1) not accepting Dr. Glista's opinion, 2) by adopting Dr. Mullan's opinion (in the deposition which Lyons itself took), 3) by reconsidering Dr. Garron's testimony and re-characterizing his opinion, 4) by accepting Dr. Ziporyn's opinion, 5) by failing to adopt the findings of Gary Goldetsky, a clinical psychology intern retained by Respondent; that Mr. Goldetsky did not state, as Respondent alleges, that Petitioner had no organic brain damage, but stated she did not seem to have any symptoms of typical organic brain syndrome and he believed she suffered from an affective disorder as suggested by Dr. Garron, 6) by accepting Mary Weed's findings and conclusions concerning Petitioner and her behavior; that this argument is made by Respondent, notwithstanding this Court's express finding that:

> ...it was improper for Arbitrator Galicia (sic) to misstate the reason for Dr. Mullan's referral of Petitioner to Mary T. Weed and Ms. Weed's findings and conclusions concerning Petitioner and her behavior. By so doing the finding by Arbitrator, which was affirmed by the Commission, in respect to causal relation was prejudicial to Petitioner;

that this is a further attempt to discredit Mary Weed's findings and conclusions, which were unequivocal; that Respondent refers to a Psychological Vocational Testing Report by its own agents which suggests that Petitioner responded in an atypical and unusual manner....possibly so as to obtain some secondary gain in her

worker's compensation case; that Respondent, however, fails to mention its agent's recommendation, made at the conclusion of the testing, that Petitioner be referred for a follow-up evaluation by a qualified expert; that this follow-up re-evaluation request was ultimately canceled by Respondent; that furthermore, Respondent fails to mention the fact that none of the three doctors to whom it referred Petitioner for evaluation, Doctors Garron, Glista and Sackett, ever suggested she was malingering or otherwise attempting to obtain some secondary gain through her pending worker's compensation case, 7) by reconsidering and changing its findings and conclusions with respect to rehabilitation efforts made on Petitioner's behalf; 8) by considering the statements and opinions of Dr. Sackett, Respondent's examining psychiatrist, whose unequivocal opinion as to Petitioner's condition of ill-being and the causal relationship between her original injury and her condition was never mentioned in the Arbitrator's decision or in the Commission's decision and opinion on review of October 20, 1987; and 9) by entering penalties and attorney's fees pursuant to Sections 19(k), (1) and Section 16 of the Act; that this Court remanded this cause to the Commission and directed it to re-evaluate the record in respect to the issue of causal relation and make appropriate findings compatible with its re-evaluation and that the Commission followed this Court's direction to the letter and its Decision and Opinion on Remand fully and accurately reflects what was necessary to comply with the remand order and the issuance of full, complete and appropriate findings consistent therewith.

Respondent replies that Petitioner has mischaracterized and misstated this Court's ruling with respect to the question of Petitioner's condition of ill-being; that throughout these proceedings, it had been Petitioner's position that the Commission erred in finding that Petitioner suffered from a condition of ill-being that was different from her condition of ill-being at the time of the earlier two Section 19(b) arbitration proceedings in its Decision and Opinion on Review; that this Court reviewed both the arguments of Petitioner and Respondent prior to rendering its original decision; that Petitioner argued that the Commission's finding, as to the question of Petitioner's condition of ill-being, in its original decision, was both contrary to the law and against the manifest weight of the evidence; that this Court explicitly stated

that the Commission's finding, that the condition of ill-being was different at the time of the third and final arbitration, was not contrary to law and not against the manifest weight of the evidence; that this Court stated in its remand order at page 6:

> The Court agrees with the Respondent. A review of the record reveals that the Arbitrator made an implicit finding that the condition of ill-being was different than the condition of ill-being at the prior hearings. The Court determines that the implicit finding is not against the manifest weight of the evidence. Some evidence of an emotional condition of ill-being was before the Arbitrator at the prior hearings, however, there was no express finding of a causal relation between Petitioner's accidental injuries of November 17, 1980 and her emotional condition.....Furthermore, a claimant must establish that the condition at the subsequent proceeding is the same condition that existed at the prior proceeding in order for Doctrine of Res Judicata (sic) to apply. The emotional condition at the prior proceeding was that the petitioner had some depression and a mixed bipolar affective disorder. The emotional condition in the subsequent proceeding was that of a major depressive disorder. The issues must be the same. The emotional conditions were different. The Doctrine of Res Judicata does not apply (emphasis added);

that Petitioner attempts to argue that this Court gave no instruction to the Commission on remand on Petitioner's condition of ill-being; that by this Court finding that the Commission made no error in rendering its decision as to Petitioner's condition of ill-being, it was instructing the Commission on remand no to reconsider the question of Petitioner's condition of ill-being at the time of the final arbitration; that on remand the Commission was to accept that Petitioner's condition of ill-being was emotional, and a major depressive disorder, at the time of the final arbitration; that this Court gave no discretion on remand to the Commission to decide Petitioner's condition of ill-being at the third and final arbitration; that Petitioner has asked this Court to ignore the Commission's findings on remand on the question of Petitioner's condition of ill-being; that Petitioner suggests that this Court's remand order was quite clear in allowing the Commission re-evaluate the record for and determine the following issue:

Did Treece prove a causal connection between her accidental injuries of November 17 and her condition of ill-being subsequent to November 12, 1982;

That while this Court instructed the Commission to re-evaluate the record with respect to the question of causal relation this Court was also very clear that the Commission should accept the Commission's prior determination of Petitioner's condition of ill-being; that it is not disputed that the Commission re-evaluated the record with respect to the question of the causal relation between Petitioner's condition of ill-being and the accidental injuries; that what the Commission failed to do was follow this Court's determination that there was no error with respect to the Commission's earlier findings on Petitioner's condition of ill-being; that the Commission on remand violated and abused that part of this Court's remand order; that the basis for the Commission's original finding, that Petitioner had suffered a different condition of ill-being, was Petitioner's own testimony, the opinions of Dr. Glista, the opinions of Dr. Garron and the evidence and testimony of the rehabilitation specialist; that on the question of Petitioner's condition of ill-being at the time of the third and final arbitration, the Commission relied upon the testimony Dr. Glenn Glista and his opinions; that Dr. Glista was of the opinion that Petitioner was suffering from a condition that was different than her earlier condition of ill-being at the earlier two Section 19(b) proceedings; that logically, if the Commission found that the condition of ill-being was different at the time of the third and final arbitration, the Commission could not accept Dr. Mullan's opinion as to Petitioner's condition of ill-being; that Dr. Mullan gave an opinion that Petitioner was suffering from the same condition of ill-being at the time of the third and final arbitration as Petitioner suffered from at the time of the two earlier Section 19(b) proceedings; that for the Commission to now adopt Dr. Mullan's opinions on the condition of ill-being would violate this Court's remand order; that it is undisputed that Dr. Mullan's opinion was that Petitioner suffered from a post-concussion syndrome, and not an emotional condition at all relevant time periods; that the Commission on remand also violated the Court's remand order in that it found that Dr. Garron was of the opinion that there was an organic component to Petitioner's condition of ill-being; that again, by implication, the Commission on remand should have been limited

to accepting that Petitioner's condition of ill-being, at the time of the third and final arbitration, was strictly an emotional or psychological condition; that also, by implication, the Commission could not consider Dr. Ziporyn's opinion on the condition of ill-being, as he held his opinion was the same as Dr. Mullan's; that notwithstanding this Court's instructions, the Commission accepted Dr. Ziporyn's opinion as to Petitioner's condition of ill-being and thus violated this Court's remand order; that Petitioner stated that Respondent had objected to every finding the Commission made on remand and by so doing, Petitioner claims that Respondent has ignored the reason for the remand which was a re-evaluation of the record; however, the reason Respondent objected to the Commission's decision on remand was because the finding of the Commission violated this Court's remand order, specifically on the question of Petitioner's condition of ill-being; that this Court's remand order was limited to a re-evaluation of the record with two very narrow instructions; that the Commission on remand completely exceeded the scope of remand order; that the remand order called for the Commission to reconsider its position concerning the reasons why Dr. Mullan referred Petitioner to Mary Weed, the registered psychologist and to accept that Petitioner's condition of ill-being was credible in the two earlier Section 19(b) arbitration proceedings; that what the Commission did on remand was to completely re-evaluate the record and consider matters which this Court had found were not objectionable - namely, that the Commission in its first decision on review had made no error in its findings with respect to Petitioner's condition of ill-being; that this complete re-evaluation of the record, including a recharacterization by the Commission of the opinions of Dr. Glista, Dr. Garron and the rehabilitation specialist, is extremely prejudicial to Respondent; that instead of re-evaluating and clarifying the reasons for Dr. Mullan's referral and Petitioner's credibility for this Court, the Commission completely reversed its earlier decision; that this Court's original instruction was that the Commission should clarify whether it was making a new finding with respect to credibility on the issue of causal relation or whether it was overturning an earlier finding from the earlier Section 19(b) arbitration proceedings; that such clarification was required by this Court's remand order; that this Court also instructed the Commission to properly state the reasons for Dr. Mullan's referral of Petitioner to Mary Weed; that the Commission was to merely

clarify these reasons and set forth its opinions and conclusions thereof without completely overturning its findings and conclusions thereof without completely overturning its findings and conclusions on the other issues, such as Petitioner's condition of ill-being; that Petitioner states that "Lyons, however, fails to mention its agent's recommendation, made at the conclusion of testing, that Treece be referred for follow-up evaluation by a qualified expert; this follow-up evaluation request was ultimately cancelled by Lyons"; that this is inaccurate as the psychologist who performed the tests, Dr. Aronoff, and Gary Goldetsky recommended that Petitioner be examined by an independent neurologist to determine if there are any organic component to Petitioner's condition; that Petitioner was examined by a neurologist, Dr. Glista, who did not document any physiological or organic component to her behavior and thus, it is inaccurate for Petitioner to suggest that Respondent never acted upon the recommendation of the psychologist; that moreover,t he psychologist, Dr. Aronoff, and Gary Goldetsky, in their report, stated that Petitioner's job responsibilities were very modest and felt that she should return to work, as "it would be useful to provide a structured experience to improve Petitioner's self-concept and help her combat the feeling of helplessness and inactivity"; that Petitioner further stated that Doctors Garron, Glista and Sackett never suggested Petitioner was malingering or otherwise attempting some secondary gain through her pending worker's compensation case, which mischaracterized Arbitrator Galicia's findings' that Arbitrator Galicia did not state that she was malingering for secondary gain, but based his statement upon the psychologist's investigation and Mrs. Weed's investigation, which corroborated the psychologist's testing, there was a strong possibility of malingering, and that it was the psychologist who said, "in the absence of neurological signs, a possibility for malingering for secondary gain should be investigated."

The Court agrees with Petitioner. The remand order instructed the Commission to 1) re-evaluate the record in respect to the issue of causal relation, accepting the prior determination of credibility by Arbitrator Green and 2) make appropriate findings compatible with the aforesaid re-evaluation. The Commission complied with the order of remand by re-evaluating the record in respect to the issue of causal relation and by making appropriate findings compatible with the re-evaluation.

In respect to Issue Number Three, Respondent contends that the finding of the Commission, that Petitioner proved a causal relationship between her accidental injuries of November 17, 1980 and her condition of ill-being, subsequent to November 12, 1989, is against the manifest weight of the evidence. Petitioner argues that the findings of the Commission are not compatible with the findings of Arbitrator Galicia, the findings contained in its decision of October 20, 1987 and are not supported by the record.

Petitioner responds that the Commission's findings on remand clearly establish there was a causal relationship between her accidental injuries of November 17, 1980 and her present condition of ill-being; that acting upon the directions set out in this Court's remand order, the Commission carefully re-evaluated the record and determined, there was a causal relationship; that the one omission from the Commission's Decision and Opinion on Remand was the admission by Respondent's attorney to Arbitrator Sherman that in Dr. Garron's opinion Petitioner's mental condition of ill-being was causally related to her work accident;

THE ARBITRATOR: "I think what he" (Dr. Garron) "said was that in his opinion her condition was causally related to the accident."

MR. GAROFALO: "Correct".

that the Commission's Decision and Opinion on Remand fully complied with the terms of this Court's remand order, is fully supported by the record and contains an implicit finding, that its prior Decision and Opinion on Review, dated October 20, 1987, was against the manifest weight of the evidence.

Respondent replies that Petitioner states that there was one omission in the Commission's decision concerning an alleged stipulation regarding Dr. Garron's opinion as to Petitioner's condition of ill-being and causal relation; that this omission was made by Petitioner's attorney in preparing the proposed decision on remand as the Commission adopted Petitioner's proposed decision verbatim; that moreover, Dr. Garron had no opinion on the issue of causal relation and that the Commission has previously found that Dr. Garron was of the opinion that Petitioner had to be weaned from her medication and hospitalized before he was to

render any opinion as to whether Petitioner's condition of ill-being was causally related to the work-related injuries.

The Court agrees with Petitioner. The Court has reviewed the findings of the Arbitrator subsequent to the third arbitration hearing; the October 20, 1987 decision of the Commission, the Memorandum Decision and Judgment Order of this Court dated May 5, 1989, the decision and Opinion on Remand and the entire record. The Court has applied an extra degree of scrutiny to the record and determines the finding of the Commission, that Petitioner's condition of ill-being subsequent to November 12, 1982, is causally related to the accidental injuries sustained on November 17, 1980, is not against the manifest weight of the evidence. There is evidence in the record that Petitioner had a post-concussion syndrome which had both organic and clear functional (psychological) components resulting from the accident of November 17, 1980. This Court previously determined that the emotional condition existing at the prior proceedings was both depression and a mixed bipolar affective disorder, however the emotional condition in the subsequent proceeding was a major depressive disorder (emphasis supplied). The Court further determined that these conditions were different, and the Doctrine of Res Judicata did not apply. The Court further determined that the implicit finding of the Arbitrator, at the subsequent proceeding was not against the manifest weight of the evidence. This determination did not preclude a further finding, by the Commission, that the subsequent emotional condition of ill-being was causally related to the prior emotional condition of ill-being. The Commission's finding is supported by the record. In any event, it is not against the manifest weight of the evidence.

In respect to Issue Number Four, Respondent contends that the finding of the Commission, that Petitioner is entitled to additional compensation and attorneys fees, is against the manifest weight of the evidence. Respondent argues that the Commission's finding, that Respondent's failure to pay compensation benefits, subsequent to April 10, 1983, was unreasonable and vexatious is not supported by the record.

Petitioner argues that the Commission made preliminary findings to support its finding that Respondent's failure to pay was

unreasonable and vexatious and the findings are not against the manifest weight of the evidence.

The Court agrees with Petitioner. Paragraphs 10 and 11 of the Commission's Decision and Opinion on Remand gives substantial reasons for its finding that Respondent's failure to pay compensation benefits subsequent to April 10, 1983, was unreasonable and vexatious. The finding is supported by the record. In any event, it is not against the manifest weight of the evidence.

The decision of the Commission is confirmed.

Date: March 25, 1991

Enter: Judge Alexander P. White

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - LAW DIVISION
TAX AND MISCELLANEOUS REMEDIES SECTION

Naomi Treece,	)	
Petitioner/Appellant,	)	
v.	)	No. 87 L 51221
	)	
Industrial Commission of Illinois and Lyons Township High School	)	
	)	
Respondent/Appellees	)	
	)	
Lyons Township High School,	)	
	)	
Plaintiff	)	
v.	)	No. 90 L 50184
	)	Consolidated
Naomi Treece and The Illinois Industrial Commission	)	
	)	
Defendants.	)	

MEMORANDUM DECISION AND JUDGMENT

This matter is before the Court for judicial review of a Decision and Opinion on Remand of the Illinois Industrial Commission (the Commission) awarding Petitioner/Appellant-Defendant, Naomi Treece (Petitioner), temporary total disability (TTD) benefits for a period of 70 weeks and additional compensation of $15,492.00 and $2,500.00 and attorneys fees of $3,098.00, pursuant to Sections 8(b), 19(k), 19(l) and 16 of the Worker's Compensation Act (the Act).

FINDINGS, CONCLUSIONS AND DECISION OF THE ARBITRATOR See Attachment A.

FINDINGS, CONCLUSIONS AND DECISION OF THE ARBITRATOR See Attachment B.

FINDINGS, CONCLUSIONS AND DECISION OF THE ARBITRATOR See Attachment C

FINDINGS, CONCLUSIONS AND DECISION OF THE COMMISSION See Attachment D

MEMORANDUM DECISION AND JUDGMENT ORDER See Attachment E

FINDINGS, CONCLUSIONS AND DECISION ON REMAND OF THE COMMISSION See Attachment F

This case arises out of Petitioner's claim for workers' compensation benefits. Petitioner has had three arbitration hearings before the Commission with respect to her right to receive workers' compensation benefits from Respondent/Appellee-Plaintiff, Lyons Township High School (Respondent). The first arbitration proceeding was a result of her attorneys filing a petition pursuant to Section 19(b) of the Act, for TTD benefits. On February 19, 1981, Arbitrator Green awarded Petitioner 9-3/7 weeks of TTD payments and certain medical expenses. Arbitrator Green based his award on the testimony of her treating physician, Dr. John Mullan. It was Dr. Mullan's opinion that at that time Petitioner suffered from a post-concussion syndrome.

On December 21, 1981, Arbitrator Green, again pursuant to a Petition under Section 19(b) of the Act, awarded Petitioner 24 weeks of TTD benefits. He also awarded her reasonable medical expenses incurred to that date. The Arbitrator found Petitioner's complaints to be credible and consistent with the findings of her treating physician, Dr. Mullan.

The final arbitration hearing concerned Petitioner's petition for additional TTD and permanency benefits under the Act. Evidence was received, and the entire record was transferred to Arbitrator Galicia for decision. On jun 25, 1986, Arbitrator Galicia awarded Petitioner an additional 103 weeks of TTD benefits. He found that Petitioner had suffered a post-concussion syndrome, as described by Dr. Mullan, for a period of time up to and including November 11, 1982. The Arbitrator found that the claim for benefits and

medical expenses, after November 11, 1982, was not reasonably related to the work accident in question. Arbitrator Galicia's opinion was based in part on testimony that on November 11, 1982, Dr. Mullan encouraged Petitioner to return to work on that date. Arbitrator Galicia denied permanency benefits based in part upon Dr. Glista's opinions and testimony. The testimony of Dr. Glista, at the last arbitration hearing, was that Petitioner did not suffer from a post-concussion syndrome, but was suffering from a major depressive disorder, suicidal ideations, over eating, persomviolence, narcolepsy, and loss of interest in sex. It was Dr. Glista's opinion that this psychological condition was not causally related to the accident at issue.

Petitioner sought review of Arbitrator Galicia's award and decision with the Commission. Additional evidence was received by the Commission, which adopted Arbitrator Galicia's decision, and found Petitioner suffered from a psychological disorder which was not causally related to the injury. The Commission adopted the Arbitrator's finding with regard to Dr. Mullan's releasing Petitioner to return to work on November 11, 1982. The Commission noted Petitioner was not cooperative with Respondent's rehabilitation specialist who attempted to find Petitioner work. The Commission adopted the opinion of Dr. Glista, that Petitioner's condition of ill-being, at the time of the third arbitration, a major depressive disorder, suicidal ideations, over eating, hypersomviolence, narcolepsy, and loss of interest in sex (all psychological disorders), was not causally related to the accident in question.

Petitioner sought Circuit Court review, in Case No. 87 L 51221, to set aside the Commission's decision. On April 17, 1989, this Court issued its Memorandum Decision and Judgment Order. The Court determined that Arbitrator Galicia had erred in reviewing the prior record compiled by Arbitrator Green, regarding the credibility of Petitioner, as it was improper for Arbitrator Galicia to again determine the issue of Petitioner's credibility that was previously heard and determined by Arbitrator Green. The Court determined the error was prejudicial and remanded the cause to the Commission to reconsider its opinion in light of its instruction. The Court also made a determination that Arbitrator Galicia erred

in reviewing the prior record compiled by Arbitrator Green, finding a lack of credibility on the part of the psychologist, Mary Weed.

Subsequent to this decision, Respondent brought a motion, pursuant to Section 2-1203 of the Code of Civil Procedure, asking for a re-hearing on the issues which the Court felt dispositive of the case at this point.

On May 5, 1989 the Court modified the April 17, 1989 remand order by making an additional determination that the Commission had erred in misstating the reason for Dr. Mullan's referral of Petitioner to Mary Weed and Mrs. Weed's findings and conclusions. On the issue of Petitioner's condition of ill-being, the Court determined that the Commission was to determine, that at each Section 19(b) hearing, Petitioner established a condition of ill-being, and established that such condition is causally related to the work-related accident. The Court, in its remand order, determined that the Commission's decision, finding that at the first two Section 19(b) hearings, Petitioner suffered from a post-concussion syndrome with some depression, moderately severe decompensation and a mixed bipolar affective disorder, and the Commission's further finding that at the time this matter was heard at the third arbitration hearings on February 25, 1985 and May 29, 1985, Petitioner's condition of ill-being was that of a major depressive disorder, was not against the manifest weight of the evidence.

Following the remand order, Respondent filed a post-trail motion to the Court, requesting the Court to make the decision final and appealable under Supreme Court Rule 301. The Court denied Respondent's motion.

Subsequent to that decision, Respondent moved the Court to certify its May 5, 1989 remand order as appealable under Supreme Court Rule 308 concerning interlocutory appeals. On June 5, 1989, the Court denied Respondent's motion.

Respondent filed a Motion for Leave to File a Complaint for a Writ of Prohibition, pursuant to Illinois Supreme Court Rule 381,

with the Illinois Supreme Court. The motion was denied by the Supreme Court. The case was remanded to the Commission for implementation o the instructions contained in this Court's remand order.

On remand the matter was briefed by both parties and both parties submitted proposed decisions to the Commission. At the request of Petitioner, oral argument was heard before the Commission. After oral argument, the Commission reissued its decision, adopting Petitioner's proposed decision verbatim. Respondent filed this judicial review in Case No. 90 L 50184 which was consolidated with Case No. 87 L 51221.

ISSUES PRESENTED FOR REVIEW

1. Whether it was error for the Court to remand the Commission decision on review for further consideration.

2. Whether the Commission, abused the Court's remand order in its Decision on Remand.

3. Whether the finding of the Commission, that Petitioner proved a causal relationship between her accidental injuries of November 17, 1980 and her condition of ill-being, subsequent to November 12, 1982, is against the manifest weight of the evidence.

4. Whether the finding of the Commission, that Petitioner is entitled to additional compensation and attorneys fees, is against the manifest weight of the evidence.

ARGUMENTS OF THE PARTIES AND COMMENTS AND DECISION OF THE COURT

In respect to Issue Number One, Respondent contends that it was error for this Court to remand the Commission decision on review for further consideration; that Section 19(f) of the Act is part of the Illinois legislature's specific statutory system for adjudication of workers' compensation cases; that implicit in this system is that the Commission is the finder of fact and makes conclusions as to a claimant's eligibility for workers' compensation benefits (United

Airlines v. Industrial Commission (1980), 81 Ill.2d 85); that the Circuit Court's and ultimately the Appellate Court's review of Commission decisions is limited to a review provided by the Act (Gunnels v. Industrial Commission (1964), 30 Ill.2d 181); that the Commission decisions are given great deference as to the findings of fact, and in particular, the findings of fact as to the medical evidence; that the Commission is considered the expert in dealing with a claimant's right to receive workers' compensation benefits (Sears Roebuck & Company v. Industrial Commission (1980), 79 Ill.2d 59 and A.O. Smith v. Industrial Commission (1972), 51 Ill.2d 533); that the Commission is given the role of adjudicating questions of credibility and in particular the credibility of medical testimony (Gladstone v. Industrial Commission (1980), 79 Ill.2d 236 and Makris v. Industrial Commission (1980), 82 Ill.2d 502); that under the Act, a Circuit Court is granted a limited role in reviewing these proceedings; that once a Circuit Court has obtained subject matter jurisdiction, under Section 19(f) of the Act, it is to determine whether the Commission's decision is against the manifest weight of the evidence (Guardian Electric Manufacturing Company v. Industrial Commission (1973), 53 Ill.2d 530); that while Respondent acknowledges that the Circuit Court, has the right to remand a case to the Commission under its reviewing power, this right to remand has only been recognized in two types of instances; that the first instance is where the Circuit Court feels there has been error in an evidentiary ruling of the Commission and remands the case to the Commission for further proceedings to correct such error (Technical Tape Corp. v. Industrial Commission (1974), 58 Ill.2d 226); that the second is where the Commission has violated a statutory mandate and not made the requisite "findings of fact and conclusions of law" (National Biscuit, Inc. v. Industrial Commission (1984), 129 Ill.App.118; that in this latter instance, by remand, the Circuit Court instructs the Commission to do what is required by law; that there is no recognized authority for a Circuit Court to do what the Court did in this instance; that in remanding this cause to the Commission, the Court has instructed the Commission to reconsider or "rethink" its decision in light of this Court's instructions; that by so doing, this Court is going behind the Commission's decision and determining item-by-item whether the decision is against the manifest weight of the evidence; that "going behind" the

Commission's decision invades the province of the Commission's expertise; that the Commission has the expertise in determining all disputed issues of fact; that a reviewing court is limited to determining whether the Commission's decisions are against the manifest weight of the evidence; that the Circuit Court is simply to state whether the decision, "as a whole", is against the manifest weight of the evidence; that there is no provision for the Court to consider parts of the decision being against the manifest weight of the evidence or not; that the decision must be taken as a whole and not in "piece meal" fashion; that the result of "piece meal" reconsideration of the decision by the Commission is manifest in this instance; that as set forth above, the Commission disregarded this Court's earlier findings that Petitioner's condition of ill-being was different at the time of the first two Section 19(b) arbitration proceedings than it was at the time of the last arbitration proceeding; that rather than following the Court's limited remand order, the Commission abused the remand order and entered a finding which completely overturned its earlier findings on the issue of Petitioner's condition of ill-being; that such abuse and confusion on the part of the Commission was a result of this Court's attempt to review the Commission's first decision on a "piece meal" basis; that not only did this Court's remand order interject abuse and confusion into the statutory scheme for review, but also deprived Respondent of an opportunity to have a Circuit Court decision on the issue of whether the first Commission decision of October 20, 1987, was against the manifest weight of the evidence; that it is true that Arbitrator Green found that Petitioner was credible with respect to her condition of ill-being at the time of those Section 19(b) hearings, however, as this Court has correctly pointed out, Petitioner's condition of ill-being was different by the time of the third arbitration hearings; that it was within the province of the Commission, at that time, to consider whether Petitioner's complaints were credible with respect to her new condition of ill-being; that the Court found that her new condition of ill-being was a major depressive disorder and thus, while it is possible Petitioner may have been credible in her complaints with respect to a post-concussion syndrome which existed at the earlier two arbitrations hearings, it is still possible that those complaints would not be credible with respect to her new alleged condition of ill-being a major depressive disorder, at the

third arbitration hearing, and thus, even if the credibility issue is resolved in Petitioner's favor, there is still sufficient evidence in the record to support the October 20, 1987 decision of the Commission; that first, there are the opinions of Dr. Glista, Gary Goldetsky, the rehabilitation specialist, Dr. Garron and in addition to Petitioner's testimony; that secondly, even if the Court is concerned with the Commission's characterizations of Mary Weed's testimony or the reasons why Dr. Mullan referred Petitioner to Mary Weed, at best, this testimony would only relate to Mrs. Weed's findings and conclusions as it related to the condition of a post-concussion syndrome, and that these findings and conclusions would not have any bearing on the other condition of ill-being, that a major depressive disorder.

Petitioner responds that this Court's remand order was proper and called for in this cause; that Respondent argues that this Court committed error in remanding this cause to the Commission for consideration pursuant to its remand directions; that this Court's remand order was not only proper, but necessary because of the many prejudicial errors which this Court noted in the Commission's original Decision and Opinion on Review; that in Technical Tape Corp. v. Industrial Commission (1974), 58 Ill.2d 226, the Illinois Supreme Court, with reference to Section 19(f)(2) of the Act, stated at page 232:

> ....provides in part that the circuit court on review "may confirm or set aside the decision of the Commission. If the decision is set aside and the facts found in the proceedings before the Commission are sufficient, the court may enter such decision as is justified by law, or may remand the cause to the Commission for further proceedings and may state the questions requiring further hearing, and give such other instructions as may be proper". See Thompson v. Industrial Com., 377 Ill. 587; National Zinc Co. v. Industrial Com., 292 Ill. 598, 604;

that in Stockton v. Industrial Commission (1977), 69 Ill.2d 120, the Court stated at page 125;

> ...When the circuit court remanded the cause, the Commission had jurisdiction to the same extent as before its first award; however, it was bound by the rules of law announced and the directions given by the circuit court, and it was bound to follow those directions (Raffaelle v. Industrial Com. (1927), 326 Ill. 166);

that this Court found that the facts which the Commission previously found in its decision of October 20, 1987, were not sufficient and in many ways prejudicial to Petitioner; that based on that such a determination, the Court set aside the Commission's decision and properly remanded this cause to the Commission for re-evaluation of the record in respect to the issue of causal relation and directed that the Commission enter appropriate findings compatible with this re-evaluation and that this is precisely what the Commission did in its Decision and Opinion on Remand.

The Court agrees with Petitioner. Respondent argues that a Circuit Court's right to remand a cause to the Commission is limited to two narrow situations: first, when the Commission errs in respect to evidentiary rulings; and second, when the Commission fails, to make the required findings of fact and conclusions of law. Respondent incorrectly states the law pertaining to the Circuit Court's scope f authority in remanding a matter to the Commission. A Circuit Court may remand for further proceedings, and may also remand with instructions to make additional conclusions findings, to clarify findings, correct errors in evidentiary rulings, or abuses of discretion, and also to correct conclusions of law which are contrary to the law.

Furthermore, a Circuit Court can remand for the purpose of holding an additional hearing to receive additional evidence. In the instant case, the Court first determined that certain findings of the Arbitrator were both contrary to the law and prejudicial. In light of this, the Court remanded the matter to the Commission for it to reconsider its findings based on the Court's determination. The Court's remand order instructed the Commission to 1) re-evaluate the record pertaining to the issue of causal relation, accepting the prior determination of credibility by Arbitrator Green, and 2) make appropriate findings compatible with the aforesaid re-evaluation.

It was not error for the Court to remand the Commission decision on review for further consideration.

With respect to Issue Number Two, Respondent contends that the Commission, in its Decision and Opinion on Remand, abused the Court's remand order. Respondent argues that on remand, the Court instructed the Commission to accept that Petitioner was suffering from a psychological condition of ill-being at the time of the third arbitration, which differed from her condition at the time of the earlier two Section 19(b) proceedings; that the Commission on remand failed to follow this Court's instruction concerning the condition of ill-being and completely reversed its decision on the issue of Petitioner's condition of ill-being; that in the remand order, the Commission did not follow this Court's finding that the Commission's first decision, finding that the conditions of ill-being were different, was not against the manifest weight of the evidence; that the Commission abused or violated the Court's remand order by the following;

a) by adopting Dr. Mullan's opinions against Dr. Glista's;
b) by considering the condition of ill-being with respect to Dr. Garron's opinions;
c) by accepting Dr. Marvin Ziporyn's opinion as to the Petitioner's condition of ill-being;
d) by failing to make any finding that Petitioner suffered no organic brain damage at the time of her third and final arbitration based upon Gary Goldetsky's opinion as set forth in the psychological consultation report of November 4, 1982;
e) by failing to follow the Court's order on remand, which stated it was improper for Arbitrator Galicia to misstate the reasons for Dr. Mullan's referral of Petitioner to Mary Weed, in that the Commission on remand completely changed its findings and conclusions with respect to Mary Weed's testimony;
f) by failing to follow the Court's remand order with respect to rehabilitation efforts, which made no reference to any error committed by the Commission in considering its findings and conclusions relating to the testimony of the rehabilitation specialists;

g) by failing to consider the remand order which made no mention of wrong doing on the part of the Commission in considering Dr. Sackett's opinions and conclusions;

that it would not be proper for this Court to enter another remand order to correct the abuse of the Commission decision on remand but rather, it would be more proper for this Court to vacate the Commission's decision on remand and make a decision as to whether the October 20, 1987 decision, of the Commission, was against the manifest weight of the evidence; that this Court should enter a finding that the first Commission decision was not against the manifest weight of the evidence; that the Court gave two very limited instructions to the Commission to follow on remand; that the Commission failed to follow those limited instructions; that this Court, in re-evaluating the record, should enter an appropriate finding, that, as to the first Commission decision, even assuming that the Court resolves the previously discussed issues of Petitioner's credibility and Mary Weed's testimony in Petitioner's favor, the first commission decision was not against the manifest weight of the evidence; that this Court instructed the Commission to consider the credibility of Petitioner in the earlier Section 19(b) hearings.

Petitioner responds that the Commission's decision and opinion on remand complied with this Court's remand order; that the crux of Respondent's argument is that the Court, on remand, instructed the Commission to accept that Petitioner was suffering from a psychological condition of ill-being at the time of the third proceeding on Arbitration, that was different than her condition at the time of the two prior final Section 19(b) decisions; that this Court merely held that Petitioner's emotional condition was not "the same" at the third proceeding on arbitration as it was at the time of the two prior decisions, and that the Commission's decision was not contrary to law because the Doctrine of Res Judicata was inapplicable; that no decision was made by the Court as to whether the Commission's decision of October 20, 1987, was against the manifest weight of the evidence, since it determined the cause should be remanded to the Commission, because of the numerous prejudicial errors contained therein, and the record pertaining to causal relation should be re-evaluated; that the Court's order was

clear, and the Commission properly re-evaluated the record as directed, to determine the ultimate issue of whether Petitioner proved a causal relation between her accidental injuries of November 17, 1980 and her condition of ill-being subsequent to November 12, 1982; that furthermore, the Commission, in its Decision and Opinion on Remand, specifically found that Petitioner's condition of ill-being, subsequent to November 12, 1982, had a significant psychological/psychiatric component, according to Doctors Mullan, Ziporyn, Sackett and Garron; that to this extent all of the doctors agreed with Dr. Glista's opinion that Petitioner had these problems; that the disagreement concerned the cause of the injuries, which was the basis for this Court's remand order; that Respondent argues that virtually every finding which the Commission made in its Decision and Opinion on Remand abused this Court's remand order; that in so doing, it ignores that the purpose the remand order was issued was to evaluate the findings the Court deemed prejudicial to Petitioner, relating to the causal relation; that only by a careful and complete re-examination of the entire record, as directed by this Court, was it possible for the Commission to make the appropriate findings; that Respondent argues that the Commission abused and violated the remand order by: 1) not accepting Dr. Glista's opinion, 2) by adopting Dr. Mullan's opinion (in the deposition which Lyons itself took), 3) by reconsidering Dr. Garron's testimony and re-characterizing his opinion, 4) by accepting Dr. Ziporyn's opinion, 5) by failing to adopt the findings of Gary Goldetsky, a clinical psychology intern retained by Respondent; that Mr. Goldetsky did not state, as Respondent alleges, that Petitioner had no organic brain damage, but stated she did not seem to have any symptoms of typical organic brain syndrome and he believed she suffered from an affective disorder as suggested by Dr. Garron, 6) by accepting Mary Weed's findings and conclusions concerning Petitioner and her behavior; that this argument is made by Respondent, notwithstanding this Court's express finding that:

> ...it was improper for Arbitrator Galicia (sic) to misstate the reason for Dr. Mullan's referral of Petitioner to Mary T. Weed and Ms. Weed's findings and conclusions concerning Petitioner and her behavior. By so doing the finding by Arbitrator, which was affirmed by the

Commission, in respect to causal relation was prejudicial to Petitioner;

that this is a further attempt to discredit Mary Weed's findings and conclusions, which were unequivocal; that Respondent refers to a Psychological Vocational Testing Report by its own agents which suggests that Petitioner responded in an atypical and unusual manner....possibly so as to obtain some secondary gain in her worker's compensation case; that Respondent, however, fails to mention its agent's recommendation, made at the conclusion of the testing, that Petitioner be referred for a follow-up evaluation by a qualified expert; that this follow-up re-evaluation request was ultimately canceled by Respondent; that furthermore, Respondent fails to mention the fact that none of the three doctors to whom it referred Petitioner for evaluation, Doctors Garron, Glista and Sackett, ever suggested she was malingering or otherwise attempting to obtain some secondary gain through her pending worker's compensation case, 7) by reconsidering and changing its findings and conclusions with respect to rehabilitation efforts made on Petitioner's behalf; 8) by considering the statements and opinions of Dr. Sackett, Respondent's examining psychiatrist, whose unequivocal opinion as to Petitioner's condition of ill-being and the causal relationship between her original injury and her condition was never mentioned in the Arbitrator's decision or in the Commission's decision and opinion on review of October 20, 1987; and 9) by entering penalties and attorney's fees pursuant to Sections 19(k), (1) and Section 16 of the Act; that this Court remanded this cause to the Commission and directed it to re-evaluate the record in respect to the issue of causal relation and make appropriate findings compatible with its re-evaluation and that the Commission followed this Court's direction to the letter and its Decision and Opinion on Remand fully and accurately reflects what was necessary to comply with the remand order and the issuance of full, complete and appropriate findings consistent therewith.

Respondent replies that Petitioner has mischaracterized and misstated this Court's ruling with respect to the question of Petitioner's condition of ill-being; that throughout these proceedings, it had been Petitioner's position that the Commission

erred in finding that Petitioner suffered from a condition of ill-being that was different from her condition of ill-being at the time of the earlier two Section 19(b) arbitration proceedings in its Decision and Opinion on Review; that this Court reviewed both the arguments of Petitioner and Respondent prior to rendering its original decision; that Petitioner argued that the Commission's finding, as to the question of Petitioner's condition of ill-being, in its original decision, was both contrary to the law and against the manifest weight of the evidence; that this Court explicitly stated that the Commission's finding, that the condition of ill-being was different at the time of the third and final arbitration, was not contrary to law and not against the manifest weight of the evidence; that this Court stated in its remand order at page 6:

> The Court agrees with the Respondent. A review of the record reveals that the Arbitrator made an implicit finding that the condition of ill-being was different than the condition of ill-being at the prior hearings. The Court determines that the implicit finding is not against the manifest weight of the evidence. Some evidence of an emotional condition of ill-being was before the Arbitrator at the prior hearings, however, there was no express finding of a causal relation between Petitioner's accidental injuries of November 17, 1980 and her emotional condition.....Furthermore, a claimant must establish that the condition at the subsequent proceeding is the same condition that existed at the prior proceeding in order for Doctrine of Res Judicata (sic) to apply. The emotional condition at the prior proceeding was that the petitioner had some depression and a mixed bipolar affective disorder. The emotional condition in the subsequent proceeding was that of a major depressive disorder. The issues must be the same. The emotional conditions were different. The Doctrine of Res Judicata does not apply (emphasis added);

that Petitioner attempts to argue that this Court gave no instruction to the Commission on remand on Petitioner's condition of ill-being; that by this Court finding that the Commission made no error in rendering its decision as to Petitioner's condition of ill-being, it was instructing the Commission on remand no to reconsider the question of Petitioner's condition of ill-being at the

time of the final arbitration; that on remand the Commission was to accept that Petitioner's condition of ill-being was emotional, and a major depressive disorder, at the time of the final arbitration; that this Court gave no discretion on remand to the Commission to decide Petitioner's condition of ill-being at the third and final arbitration; that Petitioner has asked this Court to ignore the Commission's findings on remand on the question of Petitioner's condition of ill-being; that Petitioner suggests that this Court's remand order was quite clear in allowing the Commission re-evaluate the record for and determine the following issue:

> Did Treece prove a causal connection between her accidental injuries of November 17 and her condition of ill-being subsequent to November 12, 1982;

That while this Court instructed the Commission to re-evaluate the record with respect to the question of causal relation this Court was also very clear that the Commission should accept the Commission's prior determination of Petitioner's condition of ill-being; that it is not disputed that the Commission re-evaluated the record with respect to the question of the causal relation between Petitioner's condition of ill-being and the accidental injuries; that what the Commission failed to do was follow this Court's determination that there was no error with respect to the Commission's earlier findings on Petitioner's condition of ill-being; that the Commission on remand violated and abused that part of this Court's remand order; that the basis for the Commission's original finding, that Petitioner had suffered a different condition of ill-being, was Petitioner's own testimony, the opinions of Dr. Glista, the opinions of Dr. Garron and the evidence and testimony of the rehabilitation specialist; that on the question of Petitioner's condition of ill-being at the time of the third and final arbitration, the Commission relied upon the testimony Dr. Glenn Glista and his opinions; that Dr. Glista was of the opinion that Petitioner was suffering from a condition that was different than her earlier condition of ill-being at the earlier two Section 19(b) proceedings; that logically, if the Commission found that the condition of ill-being was different at the time of the third and final arbitration, the Commission could not accept Dr. Mullan's opinion as to Petitioner's condition of ill-being; that Dr. Mullan gave an opinion

that Petitioner was suffering from the same condition of ill-being at the time of the third and final arbitration as Petitioner suffered from at the time of the two earlier Section 19(b) proceedings; that for the Commission to now adopt Dr. Mullan's opinions on the condition of ill-being would violate this Court's remand order; that it is undisputed that Dr. Mullan's opinion was that Petitioner suffered from a post-concussion syndrome, and not an emotional condition at all relevant time periods; that the Commission on remand also violated the Court's remand order in that it found that Dr. Garron was of the opinion that there was an organic component to Petitioner's condition of ill-being; that again, by implication, the Commission on remand should have been limited to accepting that Petitioner's condition of ill-being, at the time of the third and final arbitration, was strictly an emotional or psychological condition; that also, by implication, the Commission could not consider Dr. Ziporyn's opinion on the condition of ill-being, as he held his opinion was the same as Dr. Mullan's; that notwithstanding this Court's instructions, the Commission accepted Dr. Ziporyn's opinion as to Petitioner's condition of ill-being and thus violated this Court's remand order; that Petitioner stated that Respondent had objected to every finding the Commission made on remand and by so doing, Petitioner claims that Respondent has ignored the reason for the remand which was a re-evaluation of the record; however, the reason Respondent objected to the Commission's decision on remand was because the finding of the Commission violated this Court's remand order, specifically on the question of Petitioner's condition of ill-being; that this Court's remand order was limited to a re-evaluation of the record with two very narrow instructions; that the Commission on remand completely exceeded the scope of remand order; that the remand order called for the Commission to reconsider its position concerning the reasons why Dr. Mullan referred Petitioner to Mary Weed, the registered psychologist and to accept that Petitioner's condition of ill-being was credible in the two earlier Section 19(b) arbitration proceedings; that what the Commission did on remand was to completely re-evaluate the record and consider matters which this Court had found were not objectionable - namely, that the Commission in its first decision on review had made no error in its findings with respect to Petitioner's condition of ill-being; that this complete re-evaluation of the record, including a

recharacterization by the Commission of the opinions of Dr. Glista, Dr. Garron and the rehabilitation specialist, is extremely prejudicial to Respondent; that instead of re-evaluating and clarifying the reasons for Dr. Mullan's referral and Petitioner's credibility for this Court, the Commission completely reversed its earlier decision; that this Court's original instruction was that the Commission should clarify whether it was making a new finding with respect to credibility on the issue of causal relation or whether it was overturning an earlier finding from the earlier Section 19(b) arbitration proceedings; that such clarification was required by this Court's remand order; that this Court also instructed the Commission to properly state the reasons for Dr. Mullan's referral of Petitioner to Mary Weed; that the Commission was to merely clarify these reasons and set forth its opinions and conclusions thereof without completely overturning its findings and conclusions thereof without completely overturning its findings and conclusions on the other issues, such as Petitioner's condition of ill-being; that Petitioner states that "Lyons, however, fails to mention its agent's recommendation, made at the conclusion of testing, that Treece be referred for follow-up evaluation by a qualified expert; this follow-up evaluation request was ultimately cancelled by Lyons"; that this is inaccurate as the psychologist who performed the tests, Dr. Aronoff, and Gary Goldetsky recommended that Petitioner be examined by an independent neurologist to determine if there are any organic component to Petitioner's condition; that Petitioner was examined by a neurologist, Dr. Glista, who did not document any physiological or organic component to her behavior and thus, it is inaccurate for Petitioner to suggest that Respondent never acted upon the recommendation of the psychologist; that moreover,t he psychologist, Dr. Aronoff, and Gary Goldetsky, in their report, stated that Petitioner's job responsibilities were very modest and felt that she should return to work, as "it would be useful to provide a structured experience to improve Petitioner's self-concept and help her combat the feeling of helplessness and inactivity"; that Petitioner further stated that Doctors Garron, Glista and Sackett never suggested Petitioner was malingering or otherwise attempting some secondary gain through her pending worker's compensation case, which mischaracterized Arbitrator Galicia's findings' that Arbitrator Galicia did not state that she was malingering for secondary gain, but based his statement upon the

psychologist's investigation and Mrs. Weed's investigation, which corroborated the psychologist's testing, there was a strong possibility of malingering, and that it was the psychologist who said, "in the absence of neurological signs, a possibility for malingering for secondary gain should be investigated."

The Court agrees with Petitioner. The remand order instructed the Commission to 1) re-evaluate the record in respect to the issue of causal relation, accepting the prior determination of credibility by Arbitrator Green and 2) make appropriate findings compatible with the aforesaid re-evaluation. The Commission complied with the order of remand by re-evaluating the record in respect to the issue of causal relation and by making appropriate findings compatible with the re-evaluation.

In respect to Issue Number Three, Respondent contends that the finding of the Commission, that Petitioner proved a causal relationship between her accidental injuries of November 17, 1980 and her condition of ill-being, subsequent to November 12, 1989, is against the manifest weight of the evidence. Petitioner argues that the findings of the Commission are not compatible with the findings of Arbitrator Galicia, the findings contained in its decision of October 20, 1987 and are not supported by the record.

Petitioner responds that the Commission's findings on remand clearly establish there was a causal relationship between her accidental injuries of November 17, 1980 and her present condition of ill-being; that acting upon the directions set out in this Court's remand order, the Commission carefully re-evaluated the record and determined, there was a causal relationship; that the one omission from the Commission's Decision and Opinion on Remand was the admission by Respondent's attorney to Arbitrator Sherman that in Dr. Garron's opinion Petitioner's mental condition of ill-being was causally related to her work accident;

THE ARBITRATOR: "I think what he" (Dr. Garron) "said was that in his opinion her condition was causally related to the accident."

MR. GAROFALO: "Correct".

that the Commission's Decision and Opinion on Remand fully complied with the terms of this Court's remand order, is fully supported by the record and contains an implicit finding, that its prior Decision and Opinion on Review, dated October 20, 1987, was against the manifest weight of the evidence.

Respondent replies that Petitioner states that there was one omission in the Commission's decision concerning an alleged stipulation regarding Dr. Garron's opinion as to Petitioner's condition of ill-being and causal relation; that this omission was made by Petitioner's attorney in preparing the proposed decision on remand as the Commission adopted Petitioner's proposed decision verbatim; that moreover, Dr. Garron had no opinion on the issue of causal relation and that the Commission has previously found that Dr. Garron was of the opinion that Petitioner had to be weaned from her medication and hospitalized before he was to render any opinion as to whether Petitioner's condition of ill-being was causally related to the work-related injuries.

The Court agrees with Petitioner. The Court has reviewed the findings of the Arbitrator subsequent to the third arbitration hearing; the October 20, 1987 decision of the Commission, the Memorandum Decision and Judgment Order of this Court dated May 5, 1989, the decision and Opinion on Remand and the entire record. The Court has applied an extra degree of scrutiny to the record and determines the finding of the Commission, that Petitioner's condition of ill-being subsequent to November 12, 1982, is causally related to the accidental injuries sustained on November 17, 1980, is not against the manifest weight of the evidence. There is evidence in the record that Petitioner had a post-concussion syndrome which had both organic and clear functional (psychological) components resulting from the accident of November 17, 1980. This Court previously determined that the emotional condition existing at the prior proceedings was both depression and a mixed bipolar affective disorder, however the emotional condition in the subsequent proceeding was a major depressive disorder (emphasis supplied). The Court further determined that these conditions were different, and the Doctrine of Res Judicata did not apply. The Court further determined that the implicit finding of the Arbitrator, at the subsequent proceeding

was not against the manifest weight of the evidence. This determination did not preclude a further finding, by the Commission, that the subsequent emotional condition of ill-being was causally related to the prior emotional condition of ill-being. The Commission's finding is supported by the record. In any event, it is not against the manifest weight of the evidence.

In respect to Issue Number Four, Respondent contends that the finding of the Commission, that Petitioner is entitled to additional compensation and attorneys fees, is against the manifest weight of the evidence. Respondent argues that the Commission's finding, that Respondent's failure to pay compensation benefits, subsequent to April 10, 1983, was unreasonable and vexatious is not supported by the record.

Petitioner argues that the Commission made preliminary findings to support its finding that Respondent's failure to pay was unreasonable and vexatious and the findings are not against the manifest weight of the evidence.

The Court agrees with Petitioner. Paragraphs 10 and 11 of the Commission's Decision and Opinion on Remand gives substantial reasons for its finding that Respondent's failure to pay compensation benefits subsequent to April 10, 1983, was unreasonable and vexatious. The finding is supported by the record. In any event, it is not against the manifest weight of the evidence.

The decision of the Commission is confirmed.

Date: February 21, 1991

Enter: Judge Alexander P. White

State of Illinois
County of Cook SS

Before the Industrial Commission of Illinois

Naomi Treece,	)	
	)	
Petitioner	)	
v.	)	No. 81 WC 595
	)	
Lyons Township High School	)	
	)	
Respondent.	)	

DECISION AND OPINION ON REMAND

Petitioner appealed the Decision of Arbitrator Galicia, dated June 25, 1986, finding in a proceeding subsequent to two prior proceedings under §19(b) of the Workers' Compensation Act, that as the result of accidental injuries arising out of and in the course of her employment on November 17, 1980, Petitioner was temporarily totally disabled for an additional period of 70 weeks, but failed to prove that a causal relationship exists between Petitioner's accidental injuries of November 17, 1980 and her condition of ill-being and need for medical services subsequent to November 1, 1982 or that she sustained any permanent disability or is entitled to any additional compensation under §19(k) or §19(l) of the Act and attorney's fees under §16 of the Act. The threshold issues then on Review, were whether a causal relationship existed between Petitioner's accidental injuries of November 17, 1980 and her condition of ill-being and need for medical services. The Commission after considering the entire record, adopted Arbitrator Galicia's findings and conclusions and affirmed his Decision on Arbitration in a Decision and Opinion on Review dated October 20, 1987. Petitioner appealed the Commission's Decision to the Circuit court of Cook County and on May 5, 1989, Judge Alexander P. White entered a Decision and Judgment Order, in case No. 87 L 51221, which stated:

> "The Court determines that Arbitrator Galicia erred in reviewing the prior record compiled before Arbitrator Green and then expressly finding that there was a lack of credibility

on the part of Petitioner. It was improper for him to gain determine the issue of Petitioner's credibility that was previously heard and determined by Arbitrator Green. The Court determines that by not accepting the prior determination of credibility, the finding of the Arbitrator, which was affirmed by the Commission, in respect to causal relation, was prejudicial. Furthermore, it was also improper for Arbitrator Galicia to misstate the reason for Dr. Mullan's referral of Petitioner to Mary T. Weed and Ms. Weed's findings and conclusions concerning Petitioner and her behavior. by so doing, the finding of Arbitrator Galicia, which was affirmed by the Commission, in respect to causal relation, was prejudicial to Petitioner. The Court determines the matter should be remanded to the Commission for 1) a re-evaluation of the record in respect to the issue of causal relation, accepting the prior determination of credibility by Arbitrator Green, and 2) appropriate findings compatible with the aforesaid re-evaluation.

The Decision of the Commission is set aside and the matter remanded to the Commission in accordance with the above opinion." (pp 9-10)

The Commission, after re-evaluating and considering the entire record, as directed in the Remand Order, modifies its prior decision and Opinion on Review dated October 20, 1987 and finds that a causal relationship exists between Petitioner's accidental injuries of November 17, 1980 and her present condition of ill-being and need for medical services and that Petitioner was temporarily totally disabled for a period of 175-1/7 weeks (July 10, 1981 to November 19, 1984), is entitled to $1,511.17 for reasonable and necessary medical expenses and, commencing November 19, 1984, is permanently and totally disabled under §8(f) of the Act and is entitled to additional compensation of $15,492.00 under §19(k), $2,500.00 under §19(l) and to attorney's fees of $3,098.00 under §16 of the Act for the reasons set forth below.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Commission finds:

1. Prior to the proceedings and the Arbitration and Industrial Commission Decision which is the subject matter of this Remand Order, Arbitrator Green entered two successive final §19(b) Decisions in Petitioner's favor. These proceedings were then heard, in their entirety, by Arbitrator Sherman. After proofs were closed, Arbitrator Sherman resigned her position as Arbitrator and became a Commissioner at the Industrial Commission without having written a Decision on Arbitration. This case was then assigned to Arbitrator Galicia for the purpose of writing a Decision on Arbitration based on the record of the proceedings conducted before Arbitrator Sherman. The Industrial Commission then adopted Arbitrator Galicia's findings and conclusions and made additional findings in its Decision and Opinion on Review dated October 20, 1987.

2. In the proceedings leading to Arbitrator Green's 19(b) Decision, entered on December 21, 1981, Dr. John Mullan, a Board Certified Neurosurgeon and Chairman of the Division of Neurosurgery at the University of Chicago Hospitals and Clinics and Petitioner's treating physician, testified that Petitioner had a post-concussion syndrome which had both organic and clear functional (psychological) components. Dr. Mullan referred the Petitioner to Mary T. Weed, a Registered Psychologist, for psychological testing in an attempt to quantify, if possible, what portion of her problems were organic as opposed to functional. Arbitrator Green's Decision stated:

> "The Arbitrator adopts the findings of Dr. Mullan as set out in Petitioner's Exhibit 7". (Dr. Mullan's evidence Deposition)
>
> "The Arbitrator further finds Petitioner's complaints to be credible and consistent with Dr. Mullan's findings" >

The Decision further stated:

> "The Arbitrator finds Petitioner's continuing disability as set out above" (that is, as diagnosed by Dr. Mullan) "is related to

post-concussion syndrome and related complaints and organic findings."

and that:

"The services provided by Mary T. Weed, M.A., at the request of Dr. Mullan was reasonably related to the diagnosis and treatment of Petitioner's condition" (a post-concussion syndrome with organic and functional components) "resulting from the above accident".

3. Mary T. Weed's findings and conclusions, which Arbitrator Green found to be reasonably related to the diagnosis and treatment of Petitioner's condition and which Judge White found were misstated by Arbitrator Galicia and hence prejudicial to Petitioner with respect to the issue of causal relation, were significantly different from those stated in Arbitrator Galicia's findings and conclusions. Ms. Weed did not state Petitioner intentionally did poorly on the test or that there was a strong possibility of her malingering for secondary gain. She testified:

"Her non-compliance is her sickness...in essence she is really disturbed, neurotic person with a lot of depression and anxiety...Her non-conforming is psychological."

With reference to the low IQ score Ms. Weed stated:

"I saw the low score 44 or the 0 on the subject test, and I concluded there probably was a lot of non-compliance, her knowledge, functioning level is the result of a personality disturbance when you have such discrepancy between the performance on the IQ test and the clinical impression, she does not talk like a severely impoverished intellectual. You see it going across the board and generally it means anxiety reaction unless it is a psychosis or if its just severe neurological disorders and would see it clinically in the person.

I think the lowness of the low scores, these are functional of the severely disturbed personality...Q: What is your diagnosis? A: Severely---severe neurosis with anxiety and depressive

reaction...she did not show good prognostic signs or good signs for recovery from the severe personality disorder...the IQ was a result of the severe neurosis rather than to the mental capacity, one's neurosis can mess one up."

Ms. Weed retested Petitioner in October, 1981 and concluded:

"In summary the large discrepancy between the IQ findings of the first and second testing are attributable to her erratic, primitive and fragmented personality with a readiness to become easily confused which appears to be exaggerated by possible organic brain damage. Signs of possible moderate organic brain damage were clearly seen in the area of memory and concentration and less clearly observable and to a lesser degree in the area of visual-motor functioning. She does still have some good intellectual ability and when she is not overwhelmed by her environment can occasionally perform quite adequately at a verbal level particularly when comprehension is involved. It is highly unlikely that his individual will move to a more stable level of functioning either intellectually or emotionally."

Ms. Weed did not say that Petitioner's poor performance on the test which she administered was or might have been attributable to malingering or a desire for secondary gain. Instead, in her response to Respondent's general question on cross-examination:

"Q: Can a person lie on a test? A: Yes. Q: This might be for economic gain? A: Absolutely. A:.....She couldn't do the work I gave her digits. Q: That could be defensive —that could be the attitude and motivation for economic gain? A: I have gone through that. Q: Is it possible? A: No, her nonconforming is psychological. I feel she has a sense of guilt, I don't think she is a kind of psychopath to exploit the situation. I don't see signs. I saw signs of hidden capacity, extreme mental illness."

Contrary to Arbitrator Galicia's findings, Mary Weed's test results were not diametrically opposed to Arbitrator Green's observation of Petitioner when she testified. Ms. Weed stated this and added:

"To repeat, noncompliance inability to perform is psychological, she can act better than other times...that is a typical neurotic...she was not complying, may want to make herself seem sicker. It is her sickness.

THE ARBITRATOR: "Thank you".

Finally, Mary Weed stated that she thought Petitioner had a personality disturbance before the work injury but the injury probably aggravated the condition and was the straw that broke the camel's back because she was working and coping prior to its occurrence. She concluded Petitioner incapable or working and her prognosis was poor and her condition would probably be ongoing for the balance of her life making her psychiatrically unable to work.

4. The Commission accepts the prior determination of Petitioner's credibility by Arbitrator Green, as directed in the Remand Order, and further notes that Petitioner's testimony at the proceedings which are the subject matter of this Remand Order was consistent with her prior testimony and the findings and opinions of Drs. Mullan, Sackett, Ziporyn and Garron. The Commission further notes that Dr. Mullan specifically testified that he believed Petitioner to be honest when he was deposed by Respondent on April 2, 1985.

5. Arbitrator Galicia found that Dr. Mullan felt a post-concussion syndrome would normally resolve itself within two years. The record, however, reflects that Dr. Mullan testified, in two separate evidence depositions, that there is no specific treatment known for a post concussion syndrome and the minimum time for significant problems to settle down was sic months and the hoped for time was two years but if the syndrome did not resolve itself within two years it probably never would. Arbitrator Galicia referred to the Petitioner having had several normal EEG's and stated:

"How many normal EEG's does one need before he or she is found to be normal".

The record, however, reflects that Dr. Mullan testified a positive EEG is very significant for organic brain damage, which Petitioner had, and that Petitioner had significant abnormalities on April 1, 1981 and again on February 17, 1983. We further stated a negative (normal) EEG "doesn't tell very much" and is not very meaningful since a 24 hour EEG is more reliable than one given over a brief time span and that Petitioner was taking Dilantin which could suppress her epileptic focus which he stated was caused by her work injury and a person could have a normal EEG and still have a convulsion 30 minutes later. Finally, Arbitrator Galicia stated that there was no credible psychological evidence to support a finding that the "alleged" (despite two prior final §19(b) Decisions holding that there was a work related accident) trauma aggravated or exacerbated Petitioner's psychological condition. In so doing he a) ignored the specific findings made in Arbitrator Green's second Decision on Arbitration, relating to the findings of both Dr. Mullan and the psychologist, Mary Weed; b) ignored Dr. Mullan's second evidence deposition, taken by Respondent, that Petitioner's.

> "...Inability (sic) work dates from her injury. And there's been no other cause that we know of that would have caused her to stop working except the injury. The problem is how much of this pain that she now (sic) is what we call organic and how much is functional. But irrespective, both date from her injury".
>
> Dr. Mullan added
>
> "...I have recollection that she has always been significantly psychologically upset by this whole episode."
>
> Dr. Mullan added that Ms. Weed's test
>
> "....reveal, as we suspected, that there was, indeed, were a good deal of functional problems...so these essentially confirm the clinical impression that there is a mixture of organic and inorganic. The EEG tends to support the organic component. The psychological testing supports the functional component."

c) filed to mention the opinion of Respondent's psychiatrist, Vincent A. Sackett, M.D., Medical Director of Warrenville Clinic, Ltd., which was admitted into evidence over Respondents objection as an admission against interest, that when he examined Petitioner on September 20, 1984 he found she had

> "1) Nonpsychotic organic brain syndrome secondary to post-concussion syndrome.
>
> 2) Dysthymic reaction - a non-psychotic depression probably secondary to the loss of function Ms. Treece (sic) has experienced."

and Respondent's stipulation that in Dr. Sackett's opinion;

> "Petitioner was suffering from a disability which is causally related to the trauma in question."

d) failed to mention the testimony of David Garron, Ph.D., the Clinical Psychologist that Respondent initially referred Petitioner to for evaluation on October 24, 1981 and who subsequently saw Petitioner again on December 22, 1983 and August 4, 1984.

and e) ignored the psychiatric opinion of Dr. marvin Ziporyn which was consistent with the other medical, psychological and psychiatric opinions, with the sole exception of Dr. Glista, that Petitioner's work related injury was causally related to her present condition of ill-being.

6. The Commission modifies paragraph 2 of its October 20, 1987 Decision on Review as follows: The Commission notes that on Review the parties agreed to admit as Joint Exhibit 1 on Review, the evidence deposition of Dr. Mullan taken by Respondent on April 2, 1985, and Joint Exhibit 2 on Review, the transcript of the February 25, 1985 hearing at Arbitration at which Dr. Garron testified, which erroneously was not previously transcribed.

7. The Commission modifies paragraph 3 of its October 20, 1987 Decision on Review as follows: Dr. Garron, a Clinical Psychologist, who examined Petitioner on October 21, 1981 at the

request of Dr. Shenker, Respondent's examining physician, made a diagnosis of mixed bipolar disorder and recommended that she be hospitalized for inpatient psychiatric care. The diagnosis and recommendation was set out in a letter to Dr. Shenker and made no reference to the cause of Petitioner's then existing condition of ill-being. Subsequently Dr. Garron re-examined Petitioner on December 23, 1983 and felt she was worse than when he first saw her; he made the same diagnosis as previously but added she was more depressed, was unable to work, that there might be an organic component consistent with the positive EEG results and she needed immediate psychiatric treatment and should be hospitalized. Dr. Garron saw Petitioner for a third time on August 4, 1984. He again made the same diagnosis as on the two prior occasions but added her condition had shifted to the depression side of the bipolar continuum. He said she was disabled and should be hospitalized to be weaned from the medication she was on and that his finding of decreased finger tapping speed in her right hand was consistent with the positive EEG's and the people that have concussive disorders often have affective disturbances thereafter, as Petitioner had, and the most common post-concussion emotional disturbance according to the literature was a depressive or affective disorder. He added that Petitioner's condition was chronic, that she was severely disabled, that he didn't know whether the entirety of the very severe and life threatening emotional disturbance is attributable to the blow on the head, that "medications for headache, other things, sometimes they are known to have side affects, depressive disorders of some severity", that speaking of medications, "it may well be that her treatment for the original blow may have aggravated her condition, rather than ameliorated it" and that "it is at least possible that her condition is a consequence of the blow of the head." Further, Dr. Garron testified she was still in need of treatment, unable to do anything and that her life situation had deteriorated over the year.

8. The Commission modifies paragraph 4 of its October 20, 1987 Decision on Review as follows: Dr. Mullan, On November 11, 1982 "encouraged" Petitioner to try to go back to work since he felt there was no other treatment available to her and she could return to work or not depended on whether she had pain or not and this was something only Petitioner could answer. He concluded

she had a post-concussion syndrome with an organic and functional component and said, in his evidence deposition taken by Respondent on April 2, 1985, that Petitioner's

> "...inability (sic) work dated from her injury. And there's been no other cause that we know of that would have caused her to stop working except the injury. The problem is how much of this pain that she had now is what we call organic, and how much is functional."

Respondent's rehabilitation specialist, ruth Owens, was attempting to coordinate possible treatment for Petitioner and only after this was achieved, if at all, could she realistically try to assist Petitioner to return to work. Neither Ruth Owens nor any other representative of Respondent ever offered Petitioner he old job or attempted to initiate efforts to find her any other job. Even though Dr. Mullan told Ruth Owens that he was adamantly opposed to psychiatric treatment for Petitioner because he thought it would only aggravate the situation. Ruth Owens had Petitioner tested psychologically and told her to stop taking the medication which Dr. Mullan had prescribed for her. Ruth Owens then scheduled Petitioner to be re-evaluated by a neurologist, rather than Dr. Garron, the psychologist to whom Respondent previously referred her, for further evaluation despite the obvious psychological/psychiatric problems she was having. When Petitioner told Ruth Owens she was sick and could not keep the appointment with Respondent's neurologist, in advance of said appointment, and another appointment could not be immediately rescheduled due to a communication problem, Ruth Owens wrote Respondent recommending that another medical appointment be scheduled or rehabilitation services be terminated and Respondent elected to terminate the rehabilitation services.

9. The Commission modifies paragraph 5 of its October 20, 1987 Decision on Review as follows: Arbitrator Galicia specifically relied upon the opinion of Dr. Glista, a Board Certified Neurologist, who examined Petitioner on September 13, 1984, at Respondent's request. He diagnosed severe depression and probably underlying personality disorder. Dr. Glista opined based on a reasonable degree of medical and surgical certainty that

Petitioner's accidental injuries of November 17, 1980 ere not related to her present condition of ill-being and that it was not plausible that the November 17, 1980 accident aggravated Petitioner's depression for a period of 4 years. The Commission notes that Dr. Glista testified that most neurologists are "junior psychologists" but he did not consider himself an expert in this area. The Commission further notes that Drs. Mullan, Ziporyn, and Sackett were all of the opinion that Petitioner's present condition of ill-being was causally related to her injury of November 17, 1980. Dr. Mullan testified, unequivocally, that Petitioner suffered from a post-concussion syndrome (which includes sequels such as headaches, poor memory, inability to concentrate and function, tiredness, poor sleep, irritability and psychological problems) dated from the time of her work related injury. He also said his opinion regarding her psychological problems were reinforced by Mary Weed's findings. And, Dr. Mullan specifically disagreed with Dr. Glista's opinion about the length of time depression can last stating it can last a lifetime and the majority of people with findings like Petitioner's will never return to work. Dr. Ziporyn, a Board Eligible Psychiatrist, testified that he agreed completely with Dr. Mullan's diagnosis and opinion relating to causal connection and said that a post-concussion syndrome usually resolves itself within 2 years or not at all. He stated this opinion is consistent with the American Psychiatric Association's codification called the Diagnostic and Statistical Manual. Dr. Sackett, Respondent's examining psychiatrist, who saw Petitioner one week after she was seen by Dr. Glista, agreed with Dr. Mullan's diagnosis that Petitioner had organic as well as functional (psychological/psychiatric) problems and that the Petitioner's problems were causally related to her work injury of November 17, 1980. Dr. Garron, the Clinical Psychologist, who initially examined Petitioner at the request of Dr. Shenker, Respondent's examining physician, in October, 1981, diagnosed on three separate occasions, namely in October, 1981, December 1983 and August, 1984 that Petitioner had a mixed bipolar disorder for which she should be hospitalized and treated. On the second occasion he stated she was more depressed than when he first saw her and on the third occasion he noted she was shifting even more to the depressive side of the bipolar continuum. He further testified that people with concussive disorders often

have affective disturbances thereafter, as Petitioner had, and the most common post-concussion emotional disturbances according to the literature is a depressive or affective disorder.

Based on the foregoing, the Commission modifies its prior Decision and Opinion on Review dated October 20, 1987 and finds that a causal relationship exists between Petitioner's accident injuries of November 17, 1980 and her present condition of ill-being and need for medical services.

10. Respondent closed its rehabilitation file on Petitioner on April 8, 1983 and terminated the payment of temporary total disability benefits to her on April 10, 1983 without having had her re-examined by Dr. Garron, the Clinical Psychologist, who had seen her previously at the request of Respondent's Dr. Shenker. Only after Dr. Garron's December 23, 1983 re-examination of Petitioner, when he gain diagnosed a mixed bipolar disorder, but with more depression than in October, 1981, and found her disabled and in need of immediate hospitalization, did Respondent reopen its rehabilitation file. Respondent then referred Petitioner to Dr. Glista on September 13, 1983 and Dr. Sackett on September 20, 1984 and they both opined that Petitioner was disabled. On November 19, 1984, Respondent again ceased all rehabilitation efforts without paying any benefits to Petitioner. Given Respondent's failure to provide vocational rehabilitation; medical, psychological or psychiatric treatment or show availability of work which Petitioner was capable of performing, Dr. Mullan, Dr. Garron and Dr. Ziporyn's poor prognosis for improvement in her condition of ill-being, and the now prolonged duration of Petitioner's disability, the Commission finds Petitioner permanently and totally disabled pursuant to §8(f) of the Act commencing November 19, 1984, the day Respondent last closed its rehabilitation file. The Commission further finds that Petitioner was temporarily totally disabled from July 10, 1981 to November 19, 1984, a period of 175-1/7 weeks, and is entitled to $1,511.17 for reasonable and necessary medical expenses.

11. The medical evidence offered by Respondent was Dr. Glista's opinion that no causal relationship existed between petitioner's accidental injuries of November 17, 1980 and her condition of ill-

being which existed on September 13, 1984. This opinion was contrary to the opinions of both Dr. Garron, the Clinical Psychologist that Respondent initially referred Petitioner to in October, 1981 and Dr. Sackett, the psychiatrist that Respondent referred Petitioner to one week after she saw Dr. Glista in September 1984. Nevertheless, Respondent elected to rely on Dr. Glista's opinion, despite his own admission that he was a "junior psychologist" and did not consider himself an expert in the area, notwithstanding the fact that both Drs. Garron and Sackett were experts in psychological/psychiatric matters.

Based on the foregoing, the Commission finds that Respondent's failure to pay compensation benefits subsequent to April 10, 1983 was unreasonable and vexatious and that Petitioner is entitled to additional compensation of $15,492.00 under §19(k) of the Act representing 50% of the unpaid compensation accrued between April 10, 1983 and December 12, 1986, the last Hearing on Review, is entitled to additional compensation of $2,500.00 under §19(1) of the Act, and is entitled to attorney's fees of $3,098.00 under §16 of the Act.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $198.08 per week for a period of 175-1/7 weeks, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that commencing November 19, 1984 the Respondent pay to the Petitioner the sum of $198.08 per week for life under §8(f) of the Act for the reason that the injuries sustained caused the total permanent disability of the Petitioner.

IT IS FURTHER ORDERED BY THE COMMISSION the Respondent pay to Petitioner the sum of $1,511.17 for necessary medical expenses under §8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to the Petitioner additional compensation of $15,492.00 as provided in §19(k) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to the Petitioner additional compensation in the amount of $2,500.00 as provided in §19(1) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to the attorney for the Petitioner legal fees in the amount of $3,098.00 as provided in §16 of the Act; the balance of attorney's fees to be paid by Petitioner to her attorney.

IT IS FURTHER ORDERED BY THE COMMISSION that the respondent pay to the Petitioner interest under §19(n) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

The probable cost of the record to be filed as return to Summons is the sum of $35.00, payable to the Industrial Commission of Illinois in the form of cash, check or money order therefor and deposited with the Office of the Secretary of the Commission.

Dated: January 31, 1990

Richard Gilgis
Ted Black, Jr.
Barry A. Ketter

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - LAW DIVISION
TAX AND MISCELLANEOUS REMEDIES SECTION

Naomi Treece,	)	
Petitioner/Appellant,	)	
v.	)	No. 87 L 51221
	)	
Industrial Commission of Illinois and	)	
Lyons Township High School	)	
	)	
Respondent/Appellees	)	

DECISION AND JUDGMENT ORDER

This matter is before the Court for a Judicial Review of a Decision of the Illinois Industrial Commission (the Commission) awarding Petitioner temporary total disability (TTD) for a period of 70 weeks, but denying further benefits and additional compensation, all pursuant to sections 19(b), 19(k), 19(l) and 16 of the Worker's Compensation Act (the Act).

ISSUES PRESENTED FOR REVIEW

Whether the finding of the Commission, affirming the finding of the Arbitrator, that Petitioner failed to prove a causal relationship between her accidental injuries of November 17, 1980 and her condition of ill-being, subsequent to November 12, 1982, is contrary to the law and against the manifest weight of the evidence.

FINDINGS, CONCLUSIONS AND DECISION OF THE ARBITRATOR
See Attachment A.

FINDINGS, CONCLUSIONS AND DECISION OF THE COMMISSION
See Attachment B.

ARGUMENTS OF THE PARTIES AND COMMENTS AND DECISION OF THE COURT
Petitioner contends that the finding of the Commission, adopting the finding of the Arbitrator, that Petitioner failed to prove a causal relationship between her accidental injuries of November 17, 1980

and her condition of ill-being, subsequent to November 12, 1982, is contrary to the law.

Petitioner argues that on February 24, 1981, an Arbitrator implicitly found, in a Section 19(b) decision, that an accident occurred on November 17, 1980 and expressly found that the injuries sustained caused the disabling condition of Petitioner; that on October 24, 1981, Dr. Garron, a clinical psychologist, examined Petitioner and testified that Petitioner was suffering from an emotional disturbance; that on December 30, 1981, the same Arbitrator expressly found, in a Section 19(b) decision, that the disabling condition of Petitioner was the result of an accident sustained on November 17, 1980; that neither of these decisions were reviewed by the Commission and are final determinations; that the issue of causal relation, between Petitioner's organic and functional or emotional condition of ill-being and the accident of November 17, 1980, was determined by an Arbitrator on two different occasions; that the issue of a causal relation between Petitioner's organic and functions or emotional condition of ill-being and the accident of November 17, 1980, has been determined in favor of Petitioner by two final decisions of the Commission; that, in respect to the issue of causal relation, the Arbitrator and Commission are bound by the prior determinations under the Doctrine of Res Judicata and the failure of the Arbitrator and Commission to find that a causal relationship exists between Petitioner's functional or emotional condition of ill-being and the accident of November 17, 1980, is contrary to the law.

Respondent argues that the issue presented at each of the Section 19(b) hearings was whether Petitioner's condition of ill-being, on the date of each Section 19(b) hearing, was causally related to the accident of November 17, 1980 (emphasis added); that each time a new period of disability is claimed and evidence is introduced, Petitioner must establish that the same condition of ill-being exists and the Commission must render a new determination of causal relation; that at the prior hearings the condition of ill-being established was that of a post-concussion syndrome with some depression, moderately severe decompensation and a mixed bipolar affective disorder; that when the issue of permanency was heard at the Arbitration hearings on February 25, 1985 and May 29, 1985, the condition of ill-being established was that of a major depressive

disorder; that the underlying issue before the Arbitrator in respect to causal relation was different than the underlying issue before the Arbitrator in the prior hearings; that the Arbitrator, at the subsequent hearing, was not bound by the prior determination and properly did not apply the Doctrine of Res Judicata and that implicit in the decision of the Arbitrator and the Commission, is a determination that a different condition existed.

Petitioner replies that the second 19(b) Arbitration decision was reviewed by Respondent who subsequently dismissed its review; that the condition of ill-being, which was before the Arbitrator and Commission at the proceedings which are the subject matter of this Judicial Review, existed at the time of the second Arbitration decision; that the second Arbitration decision stated:

> ....The Arbitrator adopts the findings of Dr. Mullan as set out in Px7. The Arbitrator further finds Petitioner's complaints to be credible and consistent with Dr. Mullan's findings.

that said decision also stated:

> The services provided by Mary T. Weed, M.A., at the request of Dr. Mullan was reasonably related to the diagnosis and treatment of Petitioner's condition resulting from the above accident;

that Dr. Mullan had found Petitioner had a post-concussion syndrome with organic and functional components and that Petitioner had been depressed and Elavil was prescribed for her depression and anxiety as early as January 7, 1981; that Dr. Mullan referred Petitioner to Mary Weed, M.A. for psychological testing to determine how much of her complaints were functional (psychological) as opposed to organic; that Mary Weed's diagnosis was that Petitioner had a severe neurosis with anxiety and depressive reaction and signs of possible organic brain damage and that Ms. Weed further stated Petitioner's prognosis for recovery was poor; that the subsequent proceedings resulted in the same diagnosis by Dr. Mullan as had previously been adopted by the arbitrator in his second Arbitration decision herein; that Dr. Mullan said in his opinion Petitioner's

....inability (sic) work dates from her injury. And there's been no other cause that we know of that would have caused her to stop working except the injury.

The problem is how much of this pain that she now (sic) is what we call organic, and how much is functional. But irrespective, both date from the injury;

that Dr. Mullan added:

There's no question about it that she had a post-concussive syndrome. That's what her whole problem's about.

But it's not a package deal like a burst appendix or a gallbladder stone.

It's the whole thing that happens after injuries so it can encompass very little, or it can encompass a great deal.

Q. What findings are typical of a post-concussive syndrome?

A. Again because it covers everything, everything can be included in this. So it's not a specific entity at all.

But commonly, the things that are included are headaches, poor memory, inability to concentrate, to function, tiredness.

that Dr. Mullan added that he disagreed with the opinion of Dr. Glista with respect to the length of time depression can last following an accident and stated:

People can become depressed and carry out for a lifetime. The depression is sort of a, kind of a grudge. Why did this happen to me? Why did I lose my child? Why did I lose my job? Why did I lose my health?

And people can carry this as a perpetual grudge. And if you carry this as a perpetual grudge, you can be depressed over it...This all dates from that time.

It's my opinion that this is related to an (sic) incident;

that the diagnosis of Dr. Sackett, Respondent's examining psychiatrist and Dr. Ziporyn, Petitioner's psychiatrist, was the same as Dr. Mullan's; that Dr. Garron had found Petitioner to be in an acutely troubled state and diagnosed a mixed bipolar affective disorder and in need of psychiatric treatment when he first saw her on October 24, 1981 at Respondent's request; that he similarly found her to be acutely disturbed, disabled and in need of psychiatric treatment when he next saw her on December 23, 1983; that finally, on August 4, 1984, when he last saw her, he stated his diagnosis was the same as before but it shifted to the depressive side of the bipolar continuum and he diagnosed a major depressive episode and again recommended psychiatric treatment and that there has been a continuing functional component to Petitioner's condition and it was the same, progressing condition of ill-being as that which existed at the time of the second Arbitration decision.

The Court agrees with Respondent. A review of the record reveals that the Arbitrator made an implicit finding that the condition of ill-being was different than the condition of ill-being at the prior hearings. The Court determines that the implicit finding is not against the manifest weight of the evidence.e Some evidence of an emotional condition of ill-being was before the Arbitrator at the prior hearings, however, there was no express finding of a causal relation between Petitioner's accidental injuries of November 17, 1980 and her emotional condition (emphasis added). Furthermore, a claimant must establish that the condition at the subsequent proceeding is the same condition that existed at the prior proceeding in order for the Doctrine of Res Judicate to apply. The emotional condition at the prior proceeding was that Petitioner had some depression and a mixed bipolar affective disorder. The emotional condition at the subsequent proceeding was that of a major depressive disorder. The issues must be the same. The emotional conditions were different. The Doctrine of Res Judicata does not apply. The express finding of the Arbitrator adopted by the Commission, that Petitioner failed to prove a causal relationship between her accidental injuries of November 17, 1980 to November 12, 1982, is not contrary to the law.

Petitioner's next contention is that the finding of the Commission, adopting the finding of the Arbitrator, that Petitioner failed to prove a causal relationship between her accidental injuries of November 17, 1980 and her condition of ill-being, subsequent to November 12, 1982, is against the manifest weight of the evidence. Petitioner argues that the finding of the Commission, adopting the finding of the Arbitrator, that there is no credible psychological testimony to support a finding that the alleged trauma aggravated or exacerbated her psychological condition, is against the manifest weight of the evidence; that Arbitrator Green heard the testimony of Petitioner on two occasions and awarded her TTd benefits; that in the December 21, 1981 decision of Arbitrator Green is a finding that the testimony of Petitioner was credible; that Arbitrator Galicia reviewed the testimony and reports of Mary Weed, a registered psychologist, from the previous hearings and noted that she stated Petitioner was intentionally doing poorly on the tests and that there was a strong possibility of malingering for secondary gain; that Arbitrator Galicia reviewed the "unwitnessed accident" of November 17, 1980 and noted there was no laceration or bleeding; that Arbitrator Galacia noted that Dr. Young denied that there was any evidence of vomiting, which contradicted Petitioner's complaints of "daily vomiting"; that Arbitrator Galicia noted that Dr. Neely, upon the admission of Petitioner to the University of Chicago Hospital on October 6, 1983, stated that "she sometimes eats like a maniac and occasionally makes herself throw up"; that Arbitrator Galicia noted that Arbitrator Green recalled Petitioner had no problem expressing herself whereas Mary Weed's test results were diametrically opposed to Arbitrator Green's observations; that Dr. Miller found a causal relation based on both organic and functional components and that Dr. Ziporyn and Dr. Sackett found a causal relationship between Petitioner's depression and the accident.

Respondent argues that Arbitrator Galicia noted that Dr. Marvin Ziporyn, a psychiatrist, clearly lacked credibility in that he had no contact with Petitioner and was not given the number of EEG's in the hypothetical question posed to him, and further assumed there was severe initial damage to the cranial contents, as the basis for his opinion that there was a causal relationship between Petitioner's depression and the accident, when, in fact, there was no evidence in the record of damage to the cranial contents; that Dr. Miller

admitted he was not qualified to render a psychological opinion; that Arbitrator Galicia noted that Dr. Glista, a board certified neurologist, stated that the injuries were not related to her present condition of ill-being and that it was not plausible that the accident aggravated Petitioner's depression for a period of four years; that his testimony was found to be highly credible and that Dr. Garron, a clinical psychologist, made no finding in respect to a causal relation between the accident and Petitioner's current emotional condition.

Petitioner replies that Dr. Glista, a neurologist, was less qualified to give an opinion in respect to an emotional disturbance than Dr. Ziporyn, a psychiatrist; that Arbitrator Galicia's attack upon Petitioner's credibility is not only contrary to the specific findings by Arbitrator Green in his second Arbitration decision when he stated:

> The Arbitrator further finds Petitioner's complaints to be credible and consistent with Dr. Mullan's findings

but it was also made despite evidence that Petitioner had been continuously psychologically upset at all times subsequent to her November, 1980 work related injury; that the reasons which Arbitrator Galicia cited in finding that Petitioner lacked credibility related to incidents that occurred prior in time to the second Arbitration decision and that what Arbitrator Galicia did with regard to the issue of the credibility of Petitioner and Mary Weed, as well as almost all of the other evidence, was to retry the case thereby ignoring the two prior decisions.

The Court determines that Arbitrator Galicia erred in reviewing the prior record compiled before Arbitrator Green and then expressly finding that there was a lack of credibility on the part of Petitioner and Mary Weed. It was improper for him to again determine issues of credibility that were previously heard and determined by Arbitrator Green. The Court determines that by not accepting the prior determinations of credibility, the finding of the Arbitrator, which was affirmed by the Commission, in respect to causal relation, was prejudicial. The Court determines the matter should be remanded to the Commission for a re-evaluation of the record

in respect to the issue of causal relation accepting the prior determinations of credibility by Arbitrator Green.

The decision of the Commission is set aside and the matter remanded to the Commission in accordance with the above opinion.

The Clerk of the Court is ordered to surrender the file to Petitioner's attorney for transfer to the Commission.

Dated: May 5, 1989

Enter: Judge Alexander P. White

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - LAW DIVISION
TAX AND MISCELLANEOUS REMEDIES SECTION

Naomi Treece,	)	
Petitioner/Appellant,	)	
v.	)	No. 87 L 51221
	)	
Industrial Commission of Illinois and Lyons Township High School	)	
	)	
Respondent/Appellees	)	

DECISION AND JUDGMENT ORDER

This matter is before the Court for a Judicial Review of a Decision of the Illinois Industrial Commission (the Commission) awarding Petitioner temporary total disability (TTD) for a period to 70 weeks, but denying further benefits and additional compensation, all pursuant to sections 19(b), 19(k), 19(l) and 16 of the Worker's Compensation Act (the Act).

ISSUES PRESENTED FOR REVIEW

Whether the finding of the Commission, affirming the finding of the Arbitrator, that Petitioner failed to prove a causal relationship between her accidental injuries of November 17, 1980 and her condition of ill-being, subsequent to November 12, 1982, is contrary to the law and against the manifest weight of the evidence.

Findings, Conclusions And Decision Of The Arbitrator
See Attachment A.

Findings, Conclusions And Decision Of The Commission
See Attachment B.

ARGUMENTS OF THE PARTIES AND COMMENTS AND DECISION OF THE COURT

Petitioner contends that the finding of the Commission, adopting the finding of the arbitrator, that Petitioner failed to prove a causal relationship between her accidental injuries of November 17, 1980 and her condition of ill-being, subsequent to November 12, 1982, is contrary to the law.

Petitioner argues that on February 24, 1981, an Arbitrator implicitly found, in a Section 19(b) decision, that an accident occurred on November 17, 1980 and expressly found that the injuries sustained caused the disabling condition of Petitioner; that on October 24, 1981, Dr. Garron, a clinical psychologist, examined Petitioner and testified that Petitioner was suffering from an emotional disturbance; that on December 30, 1981, the same Arbitrator expressly found, in a Section 19(b) decision, that the disabling condition of Petitioner was the result of an accident sustained on November 17, 1980; that neither of these decisions were reviewed by the Commission and are final determinations; that the issue of causal relation, between Petitioner's organic and functional or emotional condition of ill-being and the accident of November 17, 1980, was determined by Arbitrator on two different occasions; that the issue of a causal relation between Petitioner's organic and functional or emotional condition of ill-being and the accident of November 17, 1980, has been determined in favor of Petitioner by two final decisions of the Commission; that, in respect to the issue of causal relation, the Arbitrator and Commission are bound by the prior determinations under the Doctrine of Res Judicata and the failure of the Arbitrator and Commission to find that a causal relationship exists between Petitioner's functional or emotional condition of ill-being and the accident of November 17, 1980, is contrary to the law.

Respondent argues that the issue presented at each of the Section 19(b) hearings was whether Petitioner's condition of ill-being, on the date of each Section 19(b) hearing, was causally related to the accident of November 17, 1980 (emphasis added); that each time a new period of disability is claimed and evidence is introduced, Petitioner must establish that the same condition of ill-being exists and the Commission must render a new determination of causal relation; that at the prior hearings the condition of ill-being established was that of a post-concussion syndrome with some depression, moderately severe decompensation and a mixed bipolar

affective disorder; that when the issue of permanency was heard at the Arbitration hearings on February 25, 1985 and May 29, 1985, the condition of ill-being established was that of a major depressive disorder; that the underlying issue before the Arbitrator in respect to causal relation was different than the underlying issue before the Arbitrator in the prior hearings; that the Arbitrator, at the subsequent hearing, was not bound by the prior determination and properly did not apply the Doctrine of Res Judicata and that implicit in the decision of the Arbitrator and the Commission, is a determination that a different condition existed.

Petitioner replies that the second 19(b) Arbitration decision was reviewed by Respondent who subsequently dismissed this review; that the condition of ill-being, which was before the Arbitrator and Commission at the proceedings which are the subject matter of this Judicial Review, existed at the time of the second Arbitration decision; that the second Arbitration decision stated;

> ...The Arbitrator adopts the findings of Dr. Mullan as set out in Pg 7. The Arbitrator further finds Petitioner's complaints to be credible and consistent with Dr. Mullan's findings;

that said decision also stated:

> The services provided by Mary T. Weed, M.A., at the request of Dr. Mullan was reasonably related to the diagnosis and treatment of Petitioner's condition resulting from the above accident;

That Dr. Mullan had found Petitioner had a post-concussion syndrome with organic and functional components and that Petitioner had been depressed and Elavil was prescribed for her depression and anxiety as early as January 7, 1981; that Dr. Mullan referred Petitioner to Mary Weed, M.A. for psychological testing to determine how much of her complaints were functional (psychological) as opposed to organic; that Mary Weed's diagnosis was that Petitioner had a severe neurosis with anxiety and depressive reaction and signs of possible organic brain damage and that Ms. Weed further stated Petitioner's prognosis for recovery was poor; that the subsequent proceedings resulted in the same diagnosis by Dr. Mullan as had previously been adopted by the

Arbitrator in his second Arbitration decision herein; that Dr. Mullan said in his opinion Petitioner's

> ...inability (sic) work dates from her injury. And there's been no other cause that we know of that would have caused her to stop working except the injury.
>
> The problem is how much of his pain that she now (sic) is what we call organic, and how much is functional. But irrespective, both date from the injury;

that Dr. Mullan added:

> There's no question about it that she had a post-concussive syndrome. That's what her whole problem's about.
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> But it's not a package deal like a burst appendix or a gall bladder stone.
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> It's the whole thing that happens after injuries so it can encompass very little, or it can encompass a great deal.
>
> Q. What findings are typical of a post-concussive syndrome?
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> A. Again because it covers everything, everything can be included in this. So it's not a specific entity at all.
>
> But commonly, the things that are included are headaches, poor memory, inability to concentrate, to function, tiredness.

that Dr. Mullan added that he disagreed with the opinion of Dr. Glista with respect to the length of time depression can last following an accident and stated:

> People can become depressed and carry out for a lifetime. The depression is sort of a, kind of a grudge. Why did this happen to me? Why did I lose my child? Why did I lose my job? Why did I lose my health?

> And people can carry this as a perpetual grudge. And if you carry this as a perpetual grudge, you can be depressed over it...This all dates from that time.
>
> It's my opinion that this is related to an (sic) incident;

that the diagnosis of Dr. Sackett, Respondent's examining psychiatrist and Dr. Ziporyn, Petitioner's psychiatrist, was the same as Dr. Mullan's; that Dr. Garron had found Petitioner to be in an acutely troubled state and diagnosed a mixed bipolar affective disorder and in need of psychiatric treatment when he first saw her on October 24, 1981 at Respondent's request; that he similarly found her to be acutely disturbed, disabled and in need of psychiatric treatment when he next saw her on December 23, 1983; that finally, on August 4, 1984, when he last saw her, he stated his diagnosis was the same as before but it shifted to the depressive side of the bipolar continuum and he diagnosed a major depressive episode and again recommended psychiatric treatment and that there has been a continuing functional component to Petitioner's condition and it was the same, progressing condition of ill-being as that which existed at the time of the second Arbitration decision.

The Court agrees with Respondent. A review of the record reveals that the Arbitrator made an implicit finding that the condition of ill-being was different than the condition of ill-being at the prior hearings. The Court determines that the implicit finding is not against the manifest weight of the evidence.e Some evidence of an emotional condition of ill-being was before the Arbitrator at the prior hearings, however, there was no express finding of a causal relation between Petitioner's accidental injuries of November 17, 1980 and her emotional condition (emphasis added). Furthermore, a claimant must establish that the condition at the subsequent proceeding is the same condition that existed at the prior proceeding in order for the Doctrine of Res Judicate to apply. The emotional condition at the prior proceeding was that Petitioner had some depression and a mixed bipolar affective disorder. The emotional condition at the subsequent proceeding was that of a major depressive disorder. The issues must be the same. The emotional conditions were different. The Doctrine of Res Judicata does not apply. The express finding of the Arbitrator adopted by

the Commission, that Petitioner failed to prove a causal relationship between her accidental injuries of November 17, 1980 to November 12, 1982, is not contrary to the law.

Petitioner's next contention is that the finding of the Commission, adopting the finding of the Arbitrator, that Petitioner failed to prove a causal relationship between her accidental injuries of November 17, 1980 and her condition of ill-being, subsequent to November 12, 1982, is against the manifest weight of the evidence. Petitioner argues that the finding of the Commission, adopting the finding of the Arbitrator, that there is no credible psychological testimony to support a finding that the alleged trauma aggravated or exacerbated her psychological condition, is against the manifest weight of the evidence; that Arbitrator Green heard the testimony of Petitioner on two occasions and awarded her TTd benefits; that in the December 21, 1981 decision of Arbitrator Green is a finding that the testimony of Petitioner was credible; that Arbitrator Galicia reviewed the testimony and reports of Mary Weed, a registered psychologist, from the previous hearings and noted that she stated Petitioner was intentionally doing poorly on the tests and that there was a strong possibility of malingering for secondary gain; that Arbitrator Galicia reviewed the "unwitnessed accident" of November 17, 1980 and noted there was no laceration or bleeding; that Arbitrator Galacia noted that Dr. Young denied that there was any evidence of vomiting, which contradicted Petitioner's complaints of "daily vomiting"; that Arbitrator Galicia noted that Dr. Neely, upon the admission of Petitioner to the University of Chicago Hospital on October 6, 1983, stated that "she sometimes eats like a maniac and occasionally makes herself throw up"; that Arbitrator Galicia noted that Arbitrator Green recalled Petitioner had no problem expressing herself whereas Mary Weed's test results were diametrically opposed to Arbitrator Green's observations; that Dr. Miller found a causal relation based on both organic and functional components and that Dr. Ziporyn and Dr. Sackett found a causal relationship between Petitioner's depression and the accident.

Respondent argues that Arbitrator Galicia noted that Dr. Marvin Ziporyn, a psychiatrist, clearly lacked credibility in that he had no contact with Petitioner and was not given the number of EEG's in the hypothetical question posed to him, and further assumed there

was severe initial damage to the cranial contents, as the basis for his opinion that there was a causal relationship between Petitioner's depression and the accident, when, in fact, there was no evidence in the record of damage to the cranial contents; that Dr. Miller admitted he was not qualified to render a psychological opinion; that Arbitrator Galicia noted that Dr. Glista, a board certified neurologist, stated that the injuries were not related to her present condition of ill-being and that it was not plausible that the accident aggravated Petitioner's depression for a period of four years; that his testimony was found to be highly credible and that Dr. Garron, a clinical psychologist, made no finding in respect to a causal relation between the accident and Petitioner's current emotional condition.

Petitioner replies that Dr. Glista, a neurologist, was less qualified to give an opinion in respect to an emotional disturbance than Dr. Ziporyn, a psychiatrist; that Arbitrator Galicia's attack upon Petitioner's credibility is not only contrary to the specific findings by Arbitrator Green in his second Arbitration decision when he stated:

> The Arbitrator further finds Petitioner's complaints to be credible and consistent with Dr. Mullan's findings

but it was also made despite evidence that Petitioner had been continuously psychologically upset at all times subsequent to her November, 1980 work related injury; that the reasons which Arbitrator Galicia cited in finding that Petitioner lacked credibility related to incidents that occurred prior in time to the second Arbitration decision and that what Arbitrator Galicia did with regard to the issue of the credibility of Petitioner and Mary Weed, as well as almost all of the other evidence, was to retry the case thereby ignoring the two prior decisions.

The Court determines that Arbitrator Galicia erred in reviewing the prior record compiled before Arbitrator Green and then expressly finding that there was a lack of credibility on the part of Petitioner and Mary Weed. It was improper for him to again determine issues of credibility that were previously heard and determined by Arbitrator Green. The Court determines that by not accepting the prior determinations of credibility, the finding of the Arbitrator,

which was affirmed by the Commission, in respect to causal relation, was prejudicial. The Court determines the matter should be remanded to the Commission for a re-evaluation of the record in respect to the issue of causal relation accepting the prior determinations of credibility by Arbitrator Green.

The decision of the Commission is set aside and the matter remanded to the Commission in accordance with the above opinion.

The Clerk of the Court is ordered to surrender the file to Petitioner's attorney for transfer to the Commission.

Dated: April 17, 1989

Enter: Judge Alexander P. White

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - LAW DIVISION
TAX AND MISCELLANEOUS REMEDIES SECTION

Naomi Treece, Petitioner/Appellant,	)	
v.	)	No. 87 L 51221
Industrial Commission of Illinois and Lyons Township High School	)	
Respondent/Appellees	)	

DECISION AND JUDGMENT ORDER

This matter is before the Court for a Judicial Review of a Decision of the Illinois Industrial Commission (the Commission) awarding Petitioner temporary total disability (TTD) for a period of 70 weeks, but denying further benefits and additional compensation, all pursuant to sections 19(b), 19(k), 19(l) and 16 of the Worker's Compensation Act (the Act).

ISSUE PRESENTED FOR REVIEW

Whether the finding of the Commission, affirming the finding of the Arbitrator, that Petitioner failed to prove a causal relationship between her accidental injuries of November 17, 1980 and her condition of ill-being, subsequent to November 12, 1982, is contrary to the law and against the manifest weight of the evidence.

FINDINGS, CONCLUSIONS AND DECISION OF THE ARBITRATOR See Attachment A.

FINDINGS, CONCLUSIONS AND DECISION OF THE COMMISSION See Attachment B.

ARGUMENTS OF THE PARTIES AND COMMENTS AND DECISION OF THE COURT

Petitioner contends that the finding of the Commission, adopting the finding of the Arbitrator, that Petitioner failed to prove a causal relationship between her accidental injuries of November 17, 1980 and her condition of ill-being, subsequent to November 12, 1982, is contrary to the law.

Petitioner argues that on February 24, 1981, an Arbitrator implicitly found, in a Section 19(b) decision, that an accident occurred on November 17, 1980 and expressly found that the injuries sustained caused the disabling condition of Petitioner; that on December 30, 1981, the same Arbitrator found, in a Section 19(b) decision, that the disabling condition of Petitioner was the result of an accident sustained on November 17, 1980; that neither of these decisions were reviewed by the Commission and are final determinations; that the issue of causal relation, between Petitioner's condition of ill-being and the accident of November 17, 1980, was determined by an Arbitrator on two different occasions; that the issue of causal relation has been determined in favor of Petitioner by two final decisions of the Commission; that, in respect to the issue of causal relation, the Arbitrator and Commission are bound by the prior determinations under the Doctrine of Res Judicata and the failure of the Arbitrator and Commission to find that a causal relationship exists between Petitioner's condition of ill-being and the accident of November 17, 1980, is contrary to the law.

Respondent argues that the issue presented at each of the Section 19(b) hearing was whether Petitioner's condition of ill-being, on the date of each Section 19(b) hearing, was causally related to the accident of November 17, 1980 (emphasis added); that each time a new period of temporary disability is claimed and evidence is introduced, a different condition of ill-being exists and a new determination of causal relation must be rendered; that at the prior hearings the condition of ill-being established was that of a post-concussion syndrome; that when the issue of permanency was heard at the Arbitration hearings on February 25, 1985 and May 29, 1985, the condition of ill-being established was that of a major depressive disorder; that the underlying issue before the Arbitrator in respect to causal relation was different than the underlying issue before the Arbitrator in the prior hearings and that the Arbitrator, at the subsequent hearing, was not bound by the prior

determination and properly did not apply the Doctrine of Red Judicata.

The Court agrees with Respondent. A review of the record reveals that a different condition of ill-being was before the Arbitrator at the subsequent hearing; that an element of Res Judicata, that the issues be the same, is missing; that the Doctrine of Res Judicata does not apply and that the finding of the Arbitrator, adopted by the Commission, is not contrary to the law.

Petitioner's next contention is that the finding of the Commission, adopting the finding of the Arbitrator, that Petitioner failed to prove a causal relationship between her accidental injuries of November 17, 1980 and her condition of ill-being, subsequent to November 12, 1982, is against the manifest weight of the evidence. Petitioner argues that the finding of the commission, adopting the finding of the Arbitrator, that there is no credible psychological testimony to support a finding that the alleged trauma aggravated or exacerbated her psychological condition is against the manifest weight of the evidence; that Arbitrator Green heard the testimony of Petitioner on two occasions and awarded her TTD benefits; that implicit in the award of TTD benefits is a finding that the testimony of Petitioner was credible; that Arbitrator Galicia reviewed the testimony and reports of Mary Weed, a registered psychologist, from the previous hearings and noted that she stated Petitioner was intentionally doing poorly on the tests and that there was a strong possibility of malingering for secondary gain; that Arbitrator Galicia reviewed the "unwitnessed accident" of November 17, 1980 and noted there was no laceration or bleeding; that Arbitrator Galacia noted that Dr. Young denied that there was any evidence of vomiting, which contradicted Petitioner's complaints of "daily vomiting"; that Arbitrator Galicia noted that Dr. Neely, upon the admission of Petitioner to the University of Chicago Hospital on October 6, 1983, stated that "she sometimes eats like a maniac and occasionally makes herself throw up"; that Arbitrator Galicia noted that Arbitrator Green recalled Petitioner had no problem expressing herself whereas Mary Weed's test results were diametrically opposed to Arbitrator Green's observations; that Dr. Miller found a causal relation based on both organic and functional components and that Dr. Ziporyn

and Dr. Sackett found a causal relationship between Petitioner's depression and the accident.

Respondent argues that Arbitrator Galicia noted that Dr. Marvin Ziporyn, a psychiatrist, clearly lacked credibility in that he had no contact with Petitioner and was not given the number of EEG's in the hypothetical question posed to him, and further assumed there was severe initial damage to the cranial contents, as the basis for his opinion that there was a causal relationship between Petitioner's depression and the accident, when, in fact, there was no evidence in the record of damage to the cranial contents; that Dr. Miller admitted he was not qualified to render a psychological opinion; that Arbitrator Galicia noted that Dr. Glista, a board certified neurologist, stated that the injuries were not related to her present condition of ill-being and that it was to plausible that the accident aggravated Petitioner's depression for a period of four years; that his testimony was found to be highly credible and that Dr. Garron, a clinical psychologist, made no finding in respect to a causal relation between the accident and Petitioner's current emotional condition. Petitioner replies that Dr. Glista, a neurologist, was less qualified to give an opinion in respect to an emotional disturbance than Dr. Ziporyn, a psychiatrist.

The Court determines that even if Arbitrator Galicia erred in reviewing the record compiled before Arbitrator Green and finding that there was a lack of credibility on the part of Petitioner, there was a sufficient evidence in the record to support his findings that 1) no permanent disability was sustained on account of the accident, 2) that Petitioner is entitled to receive TTD benefits to November 11, 1982, 3) that there is no credible psychological testimony to support a finding that the trauma aggravated or exacerbated Petitioner's psychological condition and 4) the implicit finding that Petitioner failed to prove that a causal relationship exists between her accidental injuries of November 17, 1980 and her condition of ill-being, subsequent to November 12, 1982. He noted that Petitioner had four normal EEG's. He reviewed the medical opinions and determined that the opinion of Dr. Glista was highly credible and determined that the opinion of Dr. Ziporyn lacked credibility. The Commission reviewed the entire record, adopted the findings of the Arbitrator, made additional findings and affirmed the decision of the Arbitrator. Credibility is to be

determined by the trier of fact. In the instant case Arbitrator Green determined the credibility of the witness at the two Section 19(b) hearings. Arbitrator Galicia determined the credibility of the witnesses both at the two 19(b) hearings. Although it was improper for him to again determine the issue of credibility that was previously before Arbitrator Green there is sufficient evidence in the record to support his finding of no causal relation even if the erroneously relied upon evidence is excluded. The Commission reviewed the entire record including the findings of the Arbitrator in respect to credibility. Their findings and decision are not against the manifest weight of the record.

The decision of the Commission is confirmed.

Dated: Sept. 9, 1988 Judge Alexander P. White

State of Illinois County of Cook	SS	Before the Industrial Commission of Illinois
Naomi Treece, Petitioner v. Lyons Township High School Respondent	)	No. 81 WC 595

DECISION AND OPINION ON REVIEW

Petitioner appeals the Decision of Arbitrator Galicia finding in a proceeding subsequent to prior proceedings under §19(b) of the Workers' Compensation Act, that as the result of accidental injuries arising out of and in the source of her employment on November 17, 1980, Petitioner was temporarily totally disabled for an additional period of 70 weeks, but failed to prove that a causal relationship exists between Petitioner's accidental injuries of November 17, 1980 and her condition of ill-being and need for medical services subsequent to November 12, 1982 or that she sustained any permanent disability or is entitled to any additional compensation under §19(k) or §19(l) of the Act and attorneys' fees under of the Act. The threshold issue on Review is whether a causal relationship exists between Petitioner's accidental injuries of November 17, 1980 and her present condition of ill-being and need for medical services. The Commission, after considering the entire record, affirms the Decision of the Arbitrator for the reasons set forth below.

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

The Commission finds:

1. The Arbitrator made findings and conclusions (attached) which the Commission hereby adopts.

2. The Commission notes that on Review the parties agreed to admit as joint exhibit 1 on Review, the evidence deposition of Dr. Mullan, and joint exhibit 2 on Review, the transcript of the

February 25, 1985 hearing at Arbitration at which Dr. Garron testified, which erroneously was not previously transcribed.

3. Dr. Garron, a clinical psychologist, who examined Petitioner on October 24, 1981, at the request of Dr. Shanker, testified that Petitioner was suffering from a severe emotional disturbance, that was characterized by emotional lability with both alternation and simultaneous intrusion of euphoria and painful agitation. He recommended that Petitioner receive psychiatric care and made no causal connection between Petitioner's accident injuries of November 17, 1980 and her current emotional condition.

4. Dr. Mullan, Petitioner's treating physician, released her to return to work on November 11, 1982 but Petitioner has not attempted to find employment. Ruth Owens, Respondent's rehabilitation specialist, tried to assist Petitioner's return to work but Petitioner was uncooperative with rehabilitation efforts.

5. The Commission notes that the Arbitrator specifically relied upon the opinion of Dr. Glista, a board certified neurologist, who examined Petitioner on September 13, 1984 at Respondent's request. He diagnosed severe depression and probably underlying personality disorder. Dr. Glista opined based on a reasonable degree of medical and surgical certainty that Petitioner's accidental injuries of November 17, 1980 were not related to her present condition of ill-being and that it was not plausible that the November 17, 1980 accident aggravated Petitioner's depression for a period of four years.

Based on the above, the Commission affirms the Decision of the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the arbitrator dated June 25, 1986 is hereby affirmed.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

The probable cost of the record to be filed as return to Summons is the sum of $35.00 payable to the Industrial Commission of

Illinois in the form of cash, check or money order therefor and deposited with the Office of the Secretary of the Commission.

Dated: October 20, 1987 Richard Gilgis

PS/lcw Douglas Holland

State of Illinois) Before the Industrial Commission
County of Cook SS) of Illinois

Naomi Treece,	)	
Petitioner	)	
v.	)	No. 81 WC 595
	)	
Lyons Township High School	)	
	)	
Respondent.	)	

DECISION OF ARBITRATOR

An Application for Adjustment of Claim was filed in this matter and notice of hearing mailed to each party. The matter was heard by an Arbitrator designated by the Commission, in the City of Chicago, said County and State, on February 25, 1985 and May 29, 1985.

After hearing the proofs and allegations of the parties and having made careful inquiry in this matter the Arbitrator concludes:

On November 17, 1980, the Respondent, Lyons Township High School, was operating under and subject to the provisions of the Illinois Workers' Compensation Act; on this date the relationship of employee and employer existed between the Petitioner, Naomi Treece, and said Respondent; on the above mentioned date the Petitioner sustained accidental injuries which arose out of and in the course of the employment by the Respondent; timely notice of this accident was given the Respondent.

The earnings of the Petitioner during the year next preceding the injury were $15,450.33 and that the average weekly wage was $297.12.

Petitioner at time of injury was 41 years of age, married and had no children under 18 years of age.

Necessary first aid, medical, surgical and hospital services have partially been provided by the Respondent herein.

Petitioner is entitled to have and receive from Respondent the sum of $198.08 per week for a period of 103-3/7 weeks, that being the period of temporary total incapacity for work, for which compensation is payable.

The sum of $31,552.34 has been paid on account of this injury.

The Arbitrator renders findings of the following disputed issues:

Reasonableness or necessity of medical, surgical or hospital bills or services;

Amount of compensation due for temporary total disability;

Nature and extent of the injury;

Whether penalties should be imposed upon Respondent;

Whether Petitioner's present condition of ill-being is causally related to the injury;

The Arbitrator makes the following finding on the issue of the reasonableness or necessity of medical, surgical or hospital bills or service:

Petitioner is a 41 year old female custodian, who was struck on the left side of the head by a small speaker that allegedly fell from a wall, on November 17, 1980. Petitioner drove herself to the emergency room at LaGrange Community Hospital where she reported to the doctor there was "no loss of consciousness, only 'saw starts'." There was no laceration, bleeding or edema. The emergency room treatment was rendered at 1 a.m. She went home and returned at 1:20 p.m. where Dr. Young's subsequent physical exam revealed "an obese white female who is acutely ill with complaint of headache and tenderness over the scalp with some nausea but no vomiting (emphasis added). Examination of the head by close scrutiny does not reveal any laceration or real evidence of injury except the local spot tenderness in the left partial (sic) area." The x-ray and CT head scan were normal. His impression was that of "probably mild cerebral concussion."

Petitioner refused to take a CT scan, then agreed to take one, then became annoyed because she wasn't being "treated properly". She then had herself transferred to the University of Chicago Hospital under the care and treatment of Dr. John Mullan, Head of the Department of Neurosurgery, who had previously performed surgery on her brother-in-law (February 5, 1981, Trans. page 17).

Petitioner was admitted November 21, 1980. She told the doctor, among other things, that she had vomited "all week long", and she couldn't remember if she lost consciousness when hit on the head. On November 23, 1980, she called the nurse and reported for a "second lost her vision." Petitioner also reported she had amesis of gastric contents" in the bathroom, and was then instructed by the nurse to use amesis basin so that the contents could be checked for blood. A second CT Scan on November 21, 1980 was read normal.

A third CT Scan on November 25, 1980, was also normal. (February 9, 1981, Trans., Petitioner's Exhibit #6). She was discharged one day later.

In the February 9, 1981 transcript (Petitioner's Exhibit #7, page 13), Dr. Mullan testified that in March, 1981, a fourth CT Scan was negative, but a subsequent "EEG showed an epileptic focus in the left central parietal region of her brain." He ordered a blood flow study for April 30, 1981, which apparently was normal. Dr. Mullan admitted further that one could take an EEG three days in a row and get incompatible results each day. (February 9, 1981, Trans., Petitioner's Exhibit #7, page 25).

On July 16, 1981, another EEG was performed which was read as normal (February 9, 1981, Trans. Petitioner's Exhibit #7, page 20). An EEG taken September 8, 1984, by Dr. Glista was read as normal (Respondent's Exhibit A).

On February 24, 1981, a 19(b) decision favorable to the Petitioner was entered and filed with the Industrial Commission. She was awarded 9-3/7 weeks temporary total disability for the period November 17, 1980 to January 22, 1981. A second 19(b) decision also favorable to the Petitioner, was filed on

December 30, 1981, with the Industrial Commission. Temporary total disability was awarded from January 22, 1981 to July 9, 1981, for 24 weeks. Respondent filed a review of this decision and then dismissed its review on June 17, 1982.

It should be noted that this case was reassigned to a second Arbitrator after the 19(b) hearings because the first Arbitrator became a Commissioner. The second Arbitrator then held a permanency hearing on February 25, 1985. This Arbitrator then became a Commissioner, and the file was re-assigned to the original Arbitrator. That Arbitrator took a leave-of-absence and the file was assigned to this respective Arbitrator. (This file is further complicated by the fact that Respondent substituted new attorneys after the second 19(b) decision).

The Arbitrator makes the following finding on the issue of the amount of compensation due for temporary total disability:

Dr. Mullan testified she encouraged the Petitioner to return to work on November 11, 1982. (Joint Exhibit #1, page 5-7). He felt a post concussion syndrome would normally resolve itself in two years. (February 9, 1981, Trans., Petitioner's Exhibit #7, page 22, Joint Exhibit #1, page 27.) The Arbitrator finds the Petitioner is entitled to temporary total disability from July 10, 1981 to November 11, 1982, for a total of 70 weeks. The Petitioner is therefore owed 103-3/7 weeks temporary total disability or $20,487.41. She has been paid $31,552.34, so she therefore owes the Respondent $11,064.93.

The Arbitrator makes the following findings on the issues of whether timely notice was given and whether the Petitioner's condition of ill-being is causally related to the injury:

With regard to the neurological problem, the question which has to be asked, and which was never raised, is, how many normal EEG's does one need before he or she is found to be normal? Petitioner had at least 4 normal EEG's. This is what prompted Dr. Mullan to refer the Petitioner to Mrs. Mary T. Weed, a registered psychologist with a Master's degree, for testing. He was particularly interested in documenting some sort or organic brain damage, but Mrs. Week's investigation, testing and

testimony failed to do that. Instead, her testimony buttressed Respondent's witnesses' observations that she was intentionally doing poorly on the tests. (Petitioner's Exhibit #B), psychological and vocational testing report, pages 4, 5), and that there was a strong possibility of malingering for secondary gain. (See also, Petitioner's Group Exhibit #5, page 20). They also concluded there was no organic brain damage (Petitioner's Exhibit #B, Psychological Consultation, November 4, 1982, page 1).

The foregoing observations raises the issues of Petitioner's credibility. There are three other readily apparent inconsistencies which cast the Petitioner in a strange light.

First we have the un-witnessed "accident". If the speaker fell from any elevated height or with any speed, one would have found a laceration, or bleeding or edema. The doctor's close observation failed to reveal any of these factors. "Examination of the head by close scrutiny does not reveal any laceration or real evidence of injury except the local spot tenderness in the left parietal area" (February 9, 1981, Trans., Exhibit #5, page 3)

Second, the Petitioner testified to "daily vomiting" as part of her symptomatology. (February 9, 1981, Transcript, page 14, February 25, 1985, Trans., page 78). Her attorney included this factor (i.e. daily vomiting) in his hypothetical to Mrs. Weed (February 9, 1981, Trans., page 62) the psychologist.

Dr. N. Young in his notes of November 17, 1980, specifically denies any vomiting (February 9, 1981, Trans., Exhibit #5, page 3). The entire medical record fails to corroborate Petitioner's complaints of "daily vomiting". Nurses are always instructed to document this in their "nurses notes". There is one entry dated November 23, 1980 (February 9, 1981, Trans., Petitioner's Exhibit #6, pages 7-8) by a nurse that Petitioner reported "amesis of gastric contents" after having a "diet breakfast and lunch" —but after Petitioner was instructed to save her "emesis" for examination, she stopped vomiting.

Contrast this with her admission to Dr. Neely of the University of Chicago Hospital on October 6, 1983, that she "sometimes eats like a maniac and occasionally makes herself throw up: (emphasis added) (Petitioner's Group Exhibit #5, page 3), and the fact she has gained 100 pounds in 2-1/2 years (Supra., page 14)

Finally, we have Arbitrator Green's observation in the record (February 9, 1981, Trans., page 79) with Mrs. Weed's observations of the Petitioner. Arbitrator Green recalled that "she responded to questions, testified logically, lucidly as to the accident....and she had no trouble expressing herself...she was able to recall the details of her accident clearly, recall the actions she took following the accident clearly and gave a good account of the things...." Mrs. Weed's test results were dramatically opposed to Arbitrator Green's observations. Why would she respond straightforward and approximately in one situation, and noncomplying and inappropriately in the other?

There is no question the Petitioner has psychological problems. The record establishes a major depressive disorder, suicidal ideations, over-eating, hypersomviolence, narcolepsy, and loss of interest in sex. The issue, then, is whether or not the alleged trauma aggravated or exacerbated her psychological condition. The Arbitrator finds there is no credible psychological testimony to support such a finding. One of the psychologists opined that the signs and symptoms Ms. Treece was exhibiting could have been the side affects of Inderal (Petitioner's Exhibit #3, page 2). Dr. Mullan admitted he was not qualified to render a psychological opinion (Joint Exhibit #1, page 21). Mrs. Weed stated unequivocally the Petitioner's neurosis was "non compliance" (February 9, 1981, Trans., page 73), which she exhibited throughout her tests.

The Petitioner's last stab at establishing causal connection was Dr. Marvin Ziporyn, who psychiatric testimony clearly lacked credibility. He was impeaching Petitioner's own witness. Mrs. Weed, who had personal interaction with the Petitioner, whereas, he did not. In addition, the hypothetical posed to him makes no mention of the number of normal EEG's. Finally he is assuming "severe initial damage to the cranial contents"

(April 9, 1985, Trans., page 25a) while the record is clearly in opposition. He may be an expert on Richard Speck but he clearly is a novice when it comes to Mrs. Naomi Treece.

The Arbitrator further finds Dr. Glista's testimony regarding the lack of causal connection to be highly credible (February 25, 1985, Trans., pages 119-122).

The Arbitrator makes the following finding on the issue of the reasonableness or necessity of medical, surgical or hospital bills or service:

The Arbitrator finds that the medical bills incurred after November 11, 1982, were not reasonably related to the incident in question, and therefore, not compensable.

The Arbitrator makes the following finding on the issue of whether penalties should be imposed upon Respondent:

The issue of penalties has been rendered moot by the foregoing conclusions.

The Arbitrator finds:

Petitioner failed to prove that any permanent disability was sustained on account of the aforesaid accident for which compensation is payable, as provided by Statute.

Claim for Compensation, therefore, is denied.

Petitioner is now entitled to receive from Respondent compensation that has accrued from November 17, 1980 through April 9, 1985 and the remainder, if any, of the award to be paid to petitioner by Respondent in weekly payments.

You are further notified that unless a Petition for Review is filed with the Industrial Commission within fifteen (15) days after receipt of this decision, and a Review perfected in accordance with the Worker's Compensation Act and the Rules of the Industrial Commission, then the Decision of the Arbitrator shall be entered as the decision of the Industrial Commission. Subject to §19(n) of

the Illinois Workers' Compensation Act, the interest rate for purposes of an appeal in this case is 6.13%. However, should an Employee's appeal of this case result in either no change or a decrease in this award, interest shall not further accrue from the date of such appeal.

Dated and entered June 25, 1986.

Gilberto M. Galicia,
Arbitrator

DEC/am

State of Illinois
County of Cook SS

Before the Industrial Commission of Illinois

Naomi Treece,

Petitioner

v.

Lyons Township High School

Respondent.

No. 81 WC 595

NOTICE OF DECISION AND DECISION OF ARBITRATOR

Take notice that on December 30, 1981, the decision of the Arbitrator set forth below, was filed with the Industrial Commission.

An Application for Adjustment of Claim was filed in this matter and notice of hearing mailed to each party. The matter was heard by an Arbitrator designated by the Commission, in the City of Chicago, said County and State, on November 13, 1981. After hearing the proofs and allegations of the parties and having made careful inquiry in this matter the Arbitrator concludes:

That heretofore on, to-wit: February 19, 1981, a Decision of the Arbitrator was entered and filed with the Industrial Commission under provisions of paragraph (b) of Section 19 of the Workers' Compensation Act, wherein the Petitioner was awarded compensation for a period of 9-3/7 weeks, payable at the rate of $198.08 per week for a total of $648.49 which was paid by said Respondent pursuant to said decision.

After hearing additional testimony the Arbitrator further finds that the disabling condition of said Petitioner, as the result of the accident sustained on November 17, 1980, has not yet reached a permanent condition.

Necessary first aid, medical, surgical and hospital services have partially been provided by the Respondent herein.

The Arbitrator renders findings on the following disputed issues:

Relating to reasonableness or necessity of medical, surgical or hospital bills or service, the Arbitrator finds:

The services provided by Mary T. Weed, M.A., at the request of Dr. Mullan was reasonably related to diagnosis and treatment of Petitioner's condition resulting from the above accident.

Relating to the nature and extent of the injury, the Arbitrator finds:

The Petitioner has remained under the care of Dr. Mullan from January 22, 1981 through October 21, 1981. The Petitioner was last seen by Dr. Mullan on July 9, 1981. The Arbitrator adopts the findings of Dr. Mullan as set in Petitioner's Exhibit #7. The Arbitrator further finds Petitioner complaints to be credible and consistent with Dr. Mullan's findings.

The Arbitrator finds Petitioner's continuing disability as set out above is related to a post-concussion syndrome and related complaints and organic findings.

The Respondent is entitled to a credit for all monies paid on account of this injury.

The Arbitrator finds:

That Petitioner is entitled to have and receive from said Respondent the sum of $198.08 per week for a period of 24 weeks, as provided in paragraph (b) of Section 19 of said Act, as amended, that being the additional period of temporary total incapacity for work, subsequent to the decision of February 19, 1981.

This award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability.

Petitioner is now entitled to receive from the Respondent compensation that has accrued from January 22, 1981 through July

9, 1981. Respondent shall pay the further sum of $955.00 for necessary first aid, medical, surgical and hospital services, as provided in paragraph (a) of Section 8.

You are further notified that unless a petition for review is filed with the Industrial Commission within fifteen (15) days after receipt of this decision, and a review perfected in accordance with the Workers' Compensation Act and the Rules of the Industrial Commission, then the decision of the Arbitrator shall be entered as the decision of the Industrial Commission.

Dated and entered December 21, 1981.

Adolphus Green
Arbitrator

State of Illinois
County of Cook SS

Before the Industrial Commission of Illinois

Naomi Treece, Petitioner	)	
v.	)	No. 81 WC 595
Lyons Township High School Respondent.	)	

NOTICE OF DECISION AND DECISION OF ARBITRATOR

Take notice that on February 24, 1981, the decision of the Arbitrator set forth below, was filed with the Industrial Commission.

An application for adjustment of claim was filed in this matter and notice of hearing mailed to each party. The matter was heard before an Arbitrator designed by the Commission in the City of Chicago, said County and State, on February 9, 1981. After hearing the proofs and allegations of the parties and having made careful inquiry in this matter the Arbitrator concludes:

On November 17, 1980, the Respondent Lyons Township High School was operating under and subject to the provisions of the Illinois Workers' Compensation Act and on this date the relationship of employee and employer existed between the Petitioner Naomi Treece and said Respondent on the above mentioned date the Petitioner sustained accidental injuries which arose out of and in the course of the employment by the Respondent timely notice of this accident was given the Respondent.

The earnings of the Petitioner during the year next preceding the injury were $15,450.00 and that the average weekly wage was $297.12.

Petitioner at time of injury was 41 years of age, married and had no children under 18 years of age.

Necessary first aid, medical, surgical and hospital services have been provided in part by the Respondent herein.

The sum of $1,219.13 has been paid on account of this injury.

The Arbitrator renders findings on the following disputed issues:

(D) Whether an accident occurred which arose out of and in the course of Petitioner's employment by Respondent.

(I) Reasonableness or necessity of medical, surgical or hospital bills or services;

(J) Amount of compensation due for temporary total disability;

In support of the Arbitrator's decision relating to (D) the Arbitrator finds the following facts:

On November 17, 1980 Petitioner was hit on the head by a speaker (1' x 1' x 6") as it fell from a fixed position on the wall approximately 10 to 12 feet above the floor. Petitioner was cleaning the girls locker room in the performance of her job duties at the time of the accident. Petitioner drove to the emergency room at Community Memorial Hospital for treatment where her condition was diagnosed as "contusion skull, minimal..." and she was found to have tenderness of the left parietal area.

In support of the Arbitrator's decision relating to (I) the Arbitrator finds the following facts:

Petitioner was admitted at Community Memorial General Hospital on November 17, 1980 and Petitioner signed herself out of said hospital on November 21, 1980 and transferred to the University of Chicago Hospital. Petitioner was admitted at University of Chicago Hospital on November 21, 1980 and discharged November 26, 1980. Petitioner is currently under the care of Dr. Mullan, her attending physician at University of

Chicago Hospital, and as of January 22, 1981 he found her unable to return to work.

Petitioner's medical treatment at the above hospitals and services related thereto were reasonably related to the above accident.

In support of the Arbitrator's decision relating to (J) the Arbitrator find the following facts:

Petitioner has been under the continuous care and treatment of physicians since the above accident and as of January 22, 1981, Dr. Mullan found her to be unable to return to work at that time.

That Petitioner is entitled to have and receive from said Respondent the sum of $198.08 per week for a period of 9-3/7 weeks, that being the period of temporary total incapacity for work for which compensation is payable, as provided in paragraph (b) Section 19 of said Act, as amended, for the reason that the injuries sustained cause the disabling condition of said Petitioner; that the disabling condition is temporary and has not yet reached a permanent condition.

This award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability.

That said Respondent shall provide and pay for all necessary first aid, medical surgical and hospital services, thereafter incurred, limited, however, to that which reasonably required, to cure or relieve said Petitioner from the effects of the accident injury, as provided in paragraph (a) of Section 8 of said Act, as amended.

That said Petitioner is now entitled to have and receive from the Respondent the sum of $648.49 being the amount of compensation that has accrued from November ___, 1980, thru January 22, 1981, and to the further sum of $602.00 for necessary first aid medical, and hospital services, as provided in paragraph (a) of Section 8.

Dated and entered this date February 19, 1981.

Adolphus Green,
Arbitrator